By Mr. KELLY of New York: A bill (H. R. 8614) granting a pension to John C. McMorrow; to the Committee on Pensions.

Also, a bill (H. R. 8615) granting an increase of pension to Jennie Peavey; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8616) granting an increase of pension to Catharine Mann; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8617) granting an increase of pension to Grace M. Oliver; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8618) granting an increase of pension to Mary Jane Shell Thomas; to the Committee on Invalid Pensions.

By Mr. ROBSION of Kentucky: A bill (H. R. 8619) granting a pension to Daniel Blanton; to the Committee on Pensions.

By Mr. SABATH: A bill (H. R. 8620) for the relief of Stanislaw Pasko and Ksavery Frances Pasko (nee Fyalowna); to the Committee on Immigration and Naturalization.

## PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

3490. By Mr. RAMSPECK: Petitions of Miriam Rogers and others of the young people's and adult organizations of Haygood Memorial Methodist Episcopal Church South, Atlanta, Ga., urging the enactment of (1) the Ludlow foreign-war referendum amendment bill, (2) the Nye-Fish bill and the O'Malley bill for a peacetime embargo on arms, and (3) the bills for the nationalization of the munitions industry (H. R. 2907 and S. 874); to the Committee on Foreign Affairs.

3491. By Mr. CURLEY: Petition of the United Federal Workers of America, endorsing the Bigelow bill (H. R. 8428) to provide for the hearing and disposition of employee appeals from discriminatory treatment by superiors in the Federal service; to the Committee on the Civil Service.

3492. Also, petition of S. S. Lurline, opposing any legislation to control labor relations in the maritime unions; to the Committee on Labor.

3493. Also, petition of the United Federal Workers of America, endorsing the McCormack bill establishing a 5-day workweek for employees of the Federal Government; to the Committee on the Civil Service.

3494. By Mr. FITZGERALD: Petition of the Inter Veteran Association of New Haven County, Conn., urging our representatives in the Congress of the United States the urgent need for a congressional investigation into the organization of the German-American Bund, its aims and its purposes; to the Committee on Foreign Affairs.

3495. By Mr. MERRITT: Resolution of the Lincoln Grange, P. of H., No. 122, opposing the Black-Connery wage and hour bill; to the Committee on Labor.

3496. By Mr. TEIGAN: Petition of the Border Farmer-Labor Club, of Border, Minn., requesting that the Frazier-Lemke refinance bill be passed at the earliest possible date and afford farmers the opportunity to repossess and own their homes free of debt in the future; to the Committee on Banking and Currency.

# SENATE

## SATURDAY, DECEMBER 4, 1937

*(Legislative day of Tuesday, November 16, 1937)*

The Senate met at 11 o'clock a. m., on the expiration of the recess.

### THE JOURNAL

On request of Mr. BARKLEY, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Friday, December 3, 1937, was dispensed with, and the Journal was approved.

### CALL OF THE ROLL

Mr. MINTON. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

| | | | |
|---|---|---|---|
| Austin | Copeland | Hatch | Norris |
| Bankhead | Davis | Hayden | Pope |
| Barkley | Ellender | Hitchcock | Schwartz |
| Bilbo | Frazier | Johnson, Calif. | Sheppard |
| Borah | George | King | Thomas, Utah |
| Brown, Mich. | Gibson | Logan | Truman |
| Bulow | Gillette | McGill | Vandenberg |
| Burke | Graves | McNary | Van Nuys |
| Byrnes | Green | Miller | Walsh |
| Clark | Hale | Minton | |

Mr. MINTON. I announce that the junior Senator from West Virginia [Mr. HOLT], the Senator from Delaware [Mr. HUGHES], and the Senator from North Carolina [Mr. REYNOLDS] are absent because of illness.

The Senator from Florida [Mr. ANDREWS], the Senator from Washington [Mr. BONE], the Senator from Virginia [Mr. BYRD], the junior Senator from Illinois [Mr. DIETERICH], the Senator from Pennsylvania [Mr. GUFFEY], the senior Senator from Illinois [Mr. LEWIS], the Senator from Connecticut [Mr. MALONEY], the Senator from New Jersey [Mr. MOORE], the senior Senator from West Virginia [Mr. NEELY], the Senator from Wyoming [Mr. O'MAHONEY], the Senator from Texas [Mr. CONNALLY], the junior Senator from Maryland [Mr. RADCLIFFE], the senior Senator from Maryland [Mr. TYDINGS], and the Senator from Tennessee [Mr. MCKELLAR] are necessarily detained.

The junior Senator from New Jersey [Mr. SMATHERS] is detained from the Senate because of illness in his family.

Mr. AUSTIN. I announce that the Senator from Massachusetts [Mr. LODGE] is absent on official business.

The VICE PRESIDENT. Thirty-nine Senators have answered to their names. There is not a quorum present. The clerk will call the names of the absent Senators.

The Chief Clerk called the names of the absent Senators, and Mr. CAPPER, Mr. GERRY, Mr. MURRAY, and Mr. PITTMAN answered to their names when called.

Mr. ADAMS, Mr. ASHURST, Mr. BULKLEY, Mr. CHAVEZ, Mr. DUFFY, Mr. HARRISON, and Mr. LONERGAN entered the Chamber and answered to their names.

The VICE PRESIDENT. Fifty Senators have answered to their names. A quorum is present.

When the Senate recessed yesterday the Senator from Utah [Mr. KING] had offered an amendment, which is lying on the table, and asked for recognition this morning. The Chair recognizes the Senator from Utah.

Mr. COPELAND, Mr. AUSTIN, and other Senators addressed the Chair.

The VICE PRESIDENT. Does the Senator from Utah yield, and, if so, to whom?

Mr. KING. I yield first to the Senator from New York.

### PETITIONS

The VICE PRESIDENT laid before the Senate the petition of the Council of American Master Mariners, New York City, N. Y., praying for the enactment of legislation repealing the provision of law requiring American ships plying between ports of the United States to pay Panama Canal tolls, which was referred to the Committee on Interoceanic Canals.

He also laid before the Senate a resolution adopted by the annual meeting of the State Council of New Jersey, Junior Order of United American Mechanics, held at Atlantic City, N. J., favoring the appointment of a special committee of the Senate and House of Representatives to act in conjunction with the National Geographic Society and other learned societies and organizations to investigate and determine the origin and development of the American flag—"the Stars and Stripes," which was referred to the Committee on the Library.

### BILLS INTRODUCED

Bills were introduced, read the first time and, by unanimous consent, the second time, and referred as follows:

By Mr. LONERGAN:

A bill (S. 3088) granting an increase of pension to Ida A. Joab; to the Committee on Pensions.

By Mr. HARRISON:

A bill (S. 3089) to provide for the addition of certain lands to the Vicksburg National Military Park, in the State of Mississippi, and for other purposes; to the Committee on Public Lands and Surveys.

By Mr. WHEELER:

A bill (S. 3090) to provide for loans to farmers for crop production and harvesting during the year 1938, and for other purposes; to the Committee on Agriculture and Forestry.

By Mr. SCHWELLENBACH:

A bill (S. 3091) defining the compensation of persons holding positions as deputy clerks and commissioners of United States district courts, and for other purposes; to the Committee on the Judiciary.

By Mr. RUSSELL:

A bill (S. 3092) for the relief of the Georgia Marble Co.; and

A bill (S. 3093) for the relief of the Georgia Marble Co.; to the Committee on Claims.

By Mr. THOMAS of Oklahoma:

A bill (S. 3094) granting compensation to Robert E. Hatridge; to the Committee on Finance.

By Mr. McNARY:

A bill (S. 3095) authorizing the Secretary of War to grant to the Coos County Court of Coquille, Oreg., and the State of Oregon an easement with respect to certain lands for highway purposes; to the Committee on Military Affairs.

By Mr. ASHURST (by request):

A bill (S. 3096) to amend Section 35 of the Criminal Code, as amended (U. S. C., title 18, sec. 82), relating to purloining, stealing, or injuring property of the United States; to the Committee on the Judiciary.

(Mr. WALSH introduced Senate Joint Resolution 233, which was referred to the Committee on the Library, and appears under a separate heading.)

### HOME OF THE LATE OLIVER WENDELL HOLMES

Mr. WALSH. Out of order, I ask unanimous consent to introduce a Senate joint resolution; and I desire to make a brief statement with reference to it. The joint resolution deals with the disposition of the home in Washington recently occupied by the late Oliver Wendell Holmes.

It will be recalled that Mr. Justice Holmes made the United States Government his residuary legatee. All the assets of his estate except his home have been converted into money. In the natural course of events the executor would now proceed to sell the home, and the money would be deposited in the residuary fund, which goes to the United States Government. The residuary fund, which represents the gift to the United States, will amount to approximately $250,000.

The joint resolution I am introducing proposes that the executor be authorized to make a conveyance of the home, which is a part of the residuary estate, to the United States Government with the end in view that the United States Government for the present shall hold the residence, and later determine whether it shall be converted to a national shrine, or what other disposition may be made of it.

Personally, I should like to have those charged with the disposition of Mr. Justice Holmes' gift in the United States consider the conversion of his home into an Oliver Wendell Holmes Memorial Study Hall for the use of the law students of the Nation who come to Washington with meager financial means, and whose home facilities in Washington are inadequate for quiet study.

I introduce the joint resolution and ask that it be printed in the RECORD and referred to the Committee on the Library.

The VICE PRESIDENT. Without objection, the joint resolution will be received, printed, referred to the Committee on the Library, and also printed in the RECORD.

The joint resolution (S. J. Res. 233) to authorize the acceptance of title to the dwelling house and property, the former residence of the late Justice Oliver Wendell Holmes, located at 1720 Eye Street NW., in the District of Columbia, and for other purposes, was read twice by its title, referred to the Committee on the Library, and ordered to be printed in the RECORD, as follows:

Whereas the United States of America was named as residuary legatee in the will of Oliver Wendell Holmes; and

Whereas the estate included a dwelling house and property, located at 1720 Eye Street NW., in the District of Columbia; and

Whereas the said house had been occupied as the residence of the late Justice Holmes from 1903 until his death in 1935 and thus acquired historic significance; and

Whereas the executor under the will of Oliver Wendell Holmes, in whom title is now vested, contemplates selling the dwelling house and property on the open market to the highest bidder and then depositing the proceeds with the Secretary of the Treasury on behalf of the United States; and

Whereas such disposition of the said dwelling house and property may result in the demolition or complete renovation of the said dwelling house and thereby deprive the Government of a place of historic significance; and

Whereas the acceptance of title to the property by the United States of America as residuary legatee would render such sale unnecessary and thus prevent the loss of a place of historic significance; therefore, be it

*Resolved, etc.*, That the Attorney General, on behalf of the United States of America named as residuary legatee in the will of Oliver Wendell Holmes, is hereby authorized and directed to accept a deed conveying to the United States of America title to the dwelling house and property, the former residence of the late Justice Holmes, situated at 1720 Eye Street NW., in the District of Columbia.

SEC. 2. John G. Palfrey, the executor of the estate of Oliver Wendell Holmes, is hereby authorized to convey title to the United States of America rather than to dispose of the dwelling house and property otherwise and deposit the proceeds with the Secretary of the Treasury.

SEC. 3. After the conveyance of title the Secretary of the Interior is authorized to hold the said dwelling house and property on behalf of the United States of America and to take such steps from time to time as may be necessary to preserve the said dwelling house and property in its present condition. There is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1938, an amount sufficient to provide for such preservation.

### AGRICULTURAL RELIEF—AMENDMENTS

Mr. SMITH, Mr. CAPPER, and Mr. McGILL each submitted an amendment, and Mr. BAILEY and Mr. ELLENDER each submitted sundry amendments intended to be proposed by them, respectively, to the bill (S. 2787) to provide an adequate and balanced flow of the major agricultural commodities in interstate and foreign commerce, and for other purposes, which were severally ordered to lie on the table and to be printed.

### FEDERAL FINANCES—ADDRESS BY SENATOR WALSH

[Mr. COPELAND asked and obtained leave to have printed in the RECORD an address delivered by Senator WALSH September 14, 1937, before the Massachusetts Real Estate League at Belmont, Mass., on the subject of Federal Finances, which appears in the Appendix.]

### THE FARMER'S PLACE IN THE SOLVING OF WORLD ECONOMIC PROBLEMS—ADDRESS BY SENATOR POPE

[Mr. THOMAS of Utah asked and obtained leave to have printed in the RECORD a radio address delivered on November 28, 1937, by Senator POPE on the subject the Farmer's Place in the Solving of World Economic Problems, which appears in the Appendix.]

### STABILIZED FARMING—ADDRESS BY SENATOR POPE

[Mr. McGILL asked and obtained leave to have printed in the RECORD a radio address delivered on December 3, 1937, by Senator POPE on the subject of Stabilizing Farming, which appears in the Appendix.]

### GOVERNMENT CONTROL OF AGRICULTURAL PRODUCTION—ADDRESS BY EDW. A. O'NEAL

[Mr. BANKHEAD asked and obtained leave to have printed in the RECORD a radio address delivered on the Town Hall program by Edw. A. O'Neal, president of the American Farm Bureau Federation, supporting the affirmative of the question, Should there be Government control of agricultural production? which appears in the Appendix.]

### AGRICULTURAL RELIEF—ARTICLE BY JOHN T. FLYNN

[Mr. COPELAND asked and obtained leave to have printed in the RECORD an article by John T. Flynn, published in the Washington News of December 3, 1937, entitled "Plain Economics," which appears in the Appendix.]

AGRICULTURAL RELIEF

The Senate resumed the consideration of the bill (S. 2787) to provide an adequate and balanced flow of the major agricultural commodities in interstate and foreign commerce, and for other purposes.

Mr. VANDENBERG. Mr. President, before the Senator from Utah [Mr. KING] begins his address, will he permit me to ask the Senator from Idaho [Mr. POPE] for the definition of one phrase in the bill which I am very anxious to know about, and which I think the Senator from Utah would be glad to know about before he speaks?

Mr. KING. Very well.

Mr. VANDENBERG. I ask the junior Senator from Idaho to look at page 79 of the bill, the committee amendment at the bottom, reading as follows:

The Secretary shall determine the character and necessity for expenditures under this act; the Soil Conservation and Domestic Allotment Act, as amended; and the Sugar Act of 1937.

I ask what is meant by the expansion of secretarial authority in respect to the Sugar Act of 1937.

Mr. POPE. Mr. President, I will say to the Senator that that is an amendment which was adopted by the Agricultural Committee after having been drafted by one of the representatives of the Department. I am not entirely familiar with the amendment except as it has just been called to my attention.

Mr. VANDENBERG. I should like to know what power this amendment adds to the powers already existing in the hands of the Secretary under the Sugar Act of 1937.

Mr. POPE. I shall have to read the amendment, because it has just been called to my attention; and, as I recall, it is not one of the amendments I offered. If I may, I will read it for a moment and see what is the effect of the amendment.

Mr. VANDENBERG. Yes; and I should like to read it all into the RECORD, because it is a rather amazing amendment:

The Secretary shall determine the character and necessity for expenditures under this act; the Soil Conservation and Domestic Allotment Act, as amended; and the Sugar Act of 1937; the manner in which they shall be incurred and allowed—

That is, under all of these acts; not only the one we are now passing, but all the others—

the persons to whom payments shall be made—

Under all the acts—

including the persons entitled to receive the payments in the event of the death, incompetency or disappearance of the persons who otherwise would have been entitled to receive the payments, and shall also prescribe voucher forms and the forms in support thereof, without regard to the provisions of any other laws governing the expenditure of public funds, and such determinations and forms shall be final and conclusive upon all other officers of the Government.

I submit to the Senator that that authorization may be in full harmony with the autocratic theory of this bill, but I desire to know why it is extended also to the sugar act, and what it means when it is extended to the sugar act.

Mr. POPE. Mr. President, the Senator will see on the same page, page 79, under subdivision (b), the language which was stricken out, which relates to the pending bill, of course. As I understand, substantially the same provision was stricken out before the amendment to which the Senator refers was inserted.

Mr. VANDENBERG. If the Senator will pardon me, the language stricken out referred only to the pending bill; it did not refer to the other acts.

Mr. POPE. That is correct; I was going to say that. This was an amendment which was submitted to the committee as an amendment, or in lieu of the portion stricken out, and was adopted by the committee.

Mr. VANDENBERG. May I ask by whom it was submitted?

Mr. POPE. I do not remember who offered the amendment. I think it was prepared by the representatives of the Department of Agriculture, or some one of them. I do not remember who offered the amendment in the committee, and I did not know until this moment that it extended to the Soil Conservation Act and to the Sugar Act. I see it does. That had not been called to my attention heretofore.

I may say to the Senator with reference to the first provision, the one which was stricken out, that the bill was similar in that provision and another provision of the measure to which attention was called by the Senator from Vermont yesterday to previous acts. Substantially the same provision was in the crop-insurance bill; it was in the original draft of the tenancy bill—I do not know whether or not it went on through to enactment—and somewhat similar provisions have been in a number of acts.

The reason for the inclusion in the crop-insurance law of that provision, which is similar to the one in the pending bill, was the difficulty experienced in making payments if every small claim had to be submitted to the General Accounting Office for approval before it was paid. With reference to the pending bill, since a great deal of difficulty was experienced—and I think every Senator in the Chamber knows it—because of the very great delay in the farmers receiving their benefit payments, this course was adopted in order that payments might be made with more promptness.

I have known cases where claims were not paid for several years. In fact, I have in my office now a number of claims which are 2 or 3 years old which have never been finally disposed of one way or another. So it was to meet that situation that both in the crop-insurance bill and in the pending bill the original provision was inserted. As I have said, I am not familiar with the insertion of the provision in all the other acts.

Mr. VANDENBERG. With the indulgence of the Senator from Utah I should like to ask the Senator another question. What the able Senator has just made is an explanation probably of the elimination of the general accountancy provision of the general law, but does the explanation the Senator has made have any particular bearing upon the delegation of a power to the Secretary to determine the character of and necessity for expenditures under the pending measure? Is not that an infinitely broader delegation of power than the one the Senator has been discussing?

Mr. POPE. No. I think that was the exact language used in the crop-insurance bill, and if I am not mistaken, it was used in a number of other bills. I remember at one time during the last session I had a list of all the acts which had been passed containing somewhat similar language, and I am sure that in those measures this exact wording was used, "character and necessity for the expenditure." We followed that language very closely in the pending bill.

Mr. VANDENBERG. Is the Senator satisfied to extend this rather broad authority to the Sugar Act of 1937?

Mr. POPE. I think perhaps the same reasons would apply in making conservation payments and in making payments under the Sugar Act as would apply to payments under the pending bill, and would apply to payments under the crop-insurance measure. The long delays which have been occasioned by referring matters to the General Accounting Office I think are responsible for this language in bills which have been enacted or have been drafted since the provision was originally inserted.

Mr. VANDENBERG. I have understood that, with respect to many of these payments, the General Accounting Office has been unable to do any auditing because the Secretary and the Department were insisting upon retaining the records until the payments were completed.

Mr. POPE. I do not know as to that.

Mr. VANDENBERG. Before this particular amendment is reached, will the Senator undertake to procure for the information of the Senate the reason why the Secretary of Agriculture wants to reach into the Sugar Act through the back door of the pending bill, and what he wants to do after he gets in through the back door?

Mr. POPE. I shall be very glad to find any additional reason that may exist in addition to those I have given.

Mr. VANDENBERG. I thank the Senator from Utah for yielding to me.

Mr. KING. Mr. President, our attention has just been directed by the Senator from Michigan [Mr. VANDENBERG] to what I conceive to be an unwise and improper course pursued in the drafting of important legislation—legislation which too often is rushed through Congress without proper consideration. There has been, in my opinion, too much reliance upon officials in the bureaus and executive Departments, and their views too often have controlled Congress and been crystallized into legislation. In my opinion, the bill before us is in part due to propaganda which has been carried on for a number of years by the Department of Agriculture and by bureaus and agencies thereof. Officials in the executive Departments have often visited various parts of the United States and urged the farmers to support measures which they suggest and policies which they were attempting to formulate. The measure before us has not been, in my judgment, duly considered, and efforts are being made to rush it through Congress notwithstanding its manifold imperfections and numerous provisions in contravention of the Constitution of the United States. In my opinion it is not proper, or in keeping with the spirit of our form of government, for the executive agencies and bureaus and Departments to determine the character of legislation and to formulate bills and to carry on extensive propaganda throughout the country in favor of measures which officials of the executive Departments desire to have enacted into law.

The President of the United States is authorized, under the Constitution, to make recommendations to Congress, but the Constitution does not give authority to bureaus and Departments and employees in the executive Departments to formulate legislation or to direct measures which Congress shall enact into law. Not infrequently officials of the executive Departments recommend appropriations not in harmony with the Budget submitted by the President and policies not in harmony with fundamental policies recommended by the Executive.

Unfortunately, Congress has become so accustomed to the executive Departments doing the thinking along legislative lines that opposition to this usurpation is not resented.

Mr. President, a number of years ago efforts of some executive bureaus and Departments were so flagrant and persistent that there was some talk of legislation to restrict them within their legitimate fields of operations. I recall that I drafted a bill, but which I did not introduce, aimed at what I considered to be an evil—the efforts of executive agencies to direct or control the legislative department of the Government—and to obtain the adoption of measures for the aggrandizement of executive Departments, and not always in the interest of the public. The bill was entitled "A bill prohibiting officers and employees of the executive Departments and establishments from making speeches or publishing articles designed to influence legislation."

The bill provided:

> That any officer or employee of any executive Department or establishment of the Government who, in the absence of express authorization by Congress, makes any public speech or prepares for publication any magazine or newspaper article or press release, intended or designed to influence public opinion regarding any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation shall be guilty of an offense.

Mr President, some may regard this proposed bill as too drastic and as an improper interference with the rights of officials in executive Departments, but Congress may some day take steps to keep bureaus and executives in their proper sphere.

Our fathers, in drafting the Constitution, were familiar with the fact that executive agencies had too often interfered with legislative authority and secured legislation oppressive in character and violative of the rights of the people. As we all know, our fathers determined to limit the authority of the executive department, and also to prescribe the duties of the legislative and the judicial branches of the Government. Certainly it was not contemplated that the executive branch of the Government should, through bureaus and personnel constituting a veritable army, carry on extensive propaganda in favor of measures to aggrandize the executive department, or indeed, to affect the interests of the people.

Mr. NORRIS rose.

Mr. KING. I may say to the Senator from Nebraska that I did not offer the bill which I have just read. I merely wished to challenge attention to what I considered to be an evil. I yield to the Senator.

Mr. NORRIS. Mr. President, on a broad scale I am not finding fault with the Senator's attitude. I do not believe in the domination of one department by any other department. So far as the pending bill is concerned, however, and so far as the amendments recommended by the committee are concerned, no one appears from the executive Departments except on request of the committee itself. If any blame is to be attached to anyone, it must be the committee that must bear the blame. The Secretary of Agriculture himself was invited to come before the committee, and the so-called experts—and many of them were really experts—were there all the time while the committee was putting the bill into shape, and they were there because they were asked by the committee to be present. They were asked from time to time to explain this amendment and that amendment, and the committee often disagreed with the representatives of the Department and voted down their suggestions, though often it put their suggestions into the bill.

I merely want the RECORD to show that, so far as the drafting of the pending bill by the committee is concerned, I do not see any way in which any criticism could be made of the Department of Agriculture or of any of its officials.

Mr. KING. Mr. President, I am glad to have the suggestion of my friend the Senator from Nebraska. I have no doubt that in the consideration of the bill the committee acted as best they could, and undoubtedly devoted a great amount of time to the consideration of its very complicated, confusing, and nonunderstandable provisions.

Mr. McGILL. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Utah yield to the Senator from Kansas?

Mr. KING. I yield.

Mr. McGILL. In addition to what the Senator from Nebraska has stated, members of the committee who were directed to hold hearings during the recess of the Congress called at the Department of Agriculture and requested that they submit any suggestions they might have with reference to what should be contained in the proposed legislation.

Mr. KING. Mr. President, I had in mind the general policy which has been pursued. We are all familiar with it. Nearly every Department of the Government seeks to enlarge its power, enlarge its personnel, and increase congressional appropriations, and many officials in the Departments exercise whatever influence they may have to accomplish these results. Perhaps that is quite natural; but, in my opinion, officials in executive Departments and bureaus in the past have been too officious; they have carried on propaganda inside and outside of Congress in favor of measures they desired, or in opposition to measures they disliked. Almost every day we read of some officers of the Army or of the Navy making speeches in various parts of the United States, before civic and other clubs and organizations, urging larger appropriations for the Army and the Navy. The officials in those Departments perhaps are not different from officials in other bureaus and executive Departments.

I suppose it is natural that employees and officials in executive Departments regard their particular organizations as of transcendent importance and believe that the best interests of the country would be served if their authority were increased and the field of operations of their Departments or agencies widened. Experts and scientists interested in their work often feel that their work is not fully understood or that the best results are not obtainable without additional authority and larger appropriations. The result is that the bureaus are divided and subdivided and an agency grows in importance so that demands are made that it be divided and

perhaps subdivided and other agencies and organizations created. To accompliish this, propaganda is carried on, and finally measures are introduced in Congress and supported by executive agencies for the creation of new Federal organizations. The process of proliferation works unceasingly in Departments of the Government, and a bureau or agency that starts out in a modest way finally becomes the parent, through cellular development and separation, until many new organizations and agencies are brought into existence.

Mr. President, I had intended this morning to devote some time to the discussion of the tax question and to urge immediate action by Congress, before adjournment, to pass a bill drastically modifying the undistributed-profits tax and the capital-gains tax. I thought, and I still think, that the time is propitious—indeed it is ripe—for such action. With the recession in business, with the fear which actuates so many of the businessmen, and for that matter all classes of our citizens, it seems to me that the Congress, instead of spending so much time upon the antilynching bill and the farm measure now before us, should have addressed itself to relieving the situation and to removing the fears, many of which perhaps are psychological, from the hearts and minds of the people of the United States, to the end that this recession, which may become more acute unless some relief is granted, may be arrested and the tide turned in order that business may be revived and threatened economic evils—economic and industrial—averted. I shall, however, pretermit a discussion of the tax question at this time, hoping that I may obtain the floor within a day or two in order to discuss the tax situation.

Mr. President, the Senators who are proponents of the so-called farm bill are apparently anxious to have it disposed of. I am frank to confess that I regard the measure as not only injurious to agriculture, but harmful to our country. In my opinion it is not only shot through with unconstitutional provisions but it is in opposition to sound economic laws and to the wholesome and certain development of agriculture. It disregards historic facts, and the lessons which may be learned from the pages of history of the futile efforts to interfere with natural laws and to subject agriculture and industry, generally, to regimentation and to arbitrary and capricious laws, regulations and political expediency. This bill, in my opinion. is a futile gesture which seeks to please the farmers, but which in the long run will prove disadvantageous to them and injurious to our country. If time permitted I could bring to the attention of the Senate many laws, measures, and drastic ukases and rescripts for the control of agriculture, the fixing of prices, and the regimentation of individuals. Regimentation is now quite fashionable in Russia, Germany, Italy, and in some other countries; but as regimentation advances, liberty and the rights of individuals are submerged.

Many people are fascinated with the idea that laws are more important than liberty, and that bureaus and powerful government agencies are necessary, even in democratic governments, to control trade and industry and the lives and hibits and activities of the people. It is somewhat singular that with the pages of history before us we should follow obsolete and discarded policies and introduce into our economic and industrial life policies that are an outgrowth of oppressive paternalism and autocratic rule.

I appreciate the fact that many Senators have accepted the terms of this bill and that discussion will not modify their views. I cannot help but believe, however, that the intricate, complex, obscure, and oppressive and undemocratic provisions of this measure are not fully comprehended. I believe that if they were and the evil precedent which this measure, if enacted into law, would establish, were fully understood, it would receive but a limited number of votes upon the final roll call.

Yesterday the Senator from Idaho [Mr. BORAH] delivered a very strong address which it seemed to me ought to have convinced Senators that this measure is undemocratic; at variance with our institutions and our theory of government, and will prove injurious, not only to agriculture, but to the consumers and the public generally.

Last evening the Senator from Vermont [Mr. AUSTIN] delivered a powerful address, logical and informative, which contained an analysis of the measure under consideration and presented reasons for opposition to the same.

Mr. President, this bill, as I have indicated, possesses so many infirmities, complexities, and unconstitutional provisions that I cannot give it my support. It is entitled, "A bill to provide an adequate and balanced flow of the major agricultural commodities in interstate and foreign commerce, and for other purposes." I assume that the words "for other purposes" is an omnium-gatherum—and a catch-all provision, and is intended to embrace a multitude of sins, or to cover a vast area of provisions, congruous and incongruous found in the bill.

The general declaration of policy—section 2—states that it is the intention of Congress to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide such adequate and balanced flow of such commodities as will, first, maintain both parity of prices paid to farmers and parity of income to them; and, second, provide an ever-normal granary for each of the regulated commodities, and conserve national soil resources, and prevent the wasteful use of soil fertility.

Mr. President, an effort has been made, if I understand the proponents of the bill, to base it upon the interstate commerce clause. It is, however, a bill primarily to raise prices, to fix prices, and to limit production. It has no concern for the consuming public but accepts the philosophy that scarcity produces wealth and redounds to the happiness, prosperity, and welfare of the people. It is founded upon the philosophy of defeatism—a philosophy that prevents progress and material advancement and the production of wealth. It is absolutely inconsistent with the views of those who established this Republic and incompatible with the policies which have lifted this Nation to the highest standards of civilization, progress, and prosperity ever attained by any nation. It seeks to drag this Nation into uneconomic policies which have found expression in tyrannous governments and which now find exemplification in Italy, Germany, and Russia. The goal which is sought is that of price fixing and scarcity; it resurrects the policy adopted a year or two ago, when fields of cotton and other agricultural products were plowed under, and cattle and pigs were destroyed, though multitudes of people lacked for food and clothing. I am amazed that this philosophy should be regnant today and find advocates here and elsewhere.

It is to be noted at the outset that this declaration of policy puts the cart before the horse. What is set forth in section 2 is the proposition that commerce is to be regulated in order that parity of prices and income shall be maintained as well as that an ever-normal granary shall be established. The drafters of the bill in section 30, as regards cotton, in section 40 as regards tobacco, and in section 50 as regards rice state it to be the policy to fix parity prices and establish an ever-normal warehouse in order to regulate the free flow of commerce. It is apparent that the framers of this complex patchwork of legislation have confused cause and effect in their great haste to assemble all the loose ends into a mechanism of control. Clearly the constitutional basis of the legislation is asserted to be the commerce clause; but we should be informed whether injury to commerce is the cause or the effect of agricultural dislocations.

Assume that parity of prices and of income may be a desirable end, and the protection of consumers against unreasonably high prices by the device of the ever-normal granary a consummation devoutly to be wished, yet neither of these goals furnishes a constitutional foundation for the controls sought to be established. This is tacitly admitted throughout the bill, just as it is implicit in the title of the bill. The congressional power invoked is the power to regulate commerce, but it is processing rather than production which it is sought to regulate; manufacturing instead of distribution.

It therefore becomes necessary to consider, first, the methods of regulation proposed, and, second, whether such

methods of regulation invade the forbidden realms of State rights and individual rights. Both of these questions involve vital constitutional questions. Finally, we must consider whether there are not serious objections of policy in the bill quite apart from the matter of legality of its provisions.

SCOPE OF THE BILL

The methods of regulation contemplated in the bill virtually defy analysis and classification, so complex are they in scope and so intricate and detailed in their operation. The bill only incidentally and in a remote sense relates to transportation and distribution in interstate commerce, but is confined almost entirely to the regulation of the production of the specified commodities, as well as to others not specified. On the contrary, it is designed to impose Federal control over the growing of crops which has always, and without exception, been held to be a purely local matter subject uniquely to State control. The bill "proposes a plan for raising prices through control of production."

That sentence I quote from page 14 of the report of the Senate Committee on Agriculture and Forestry on the pending bill. I emphasize the statement.

The bill proposes a plan for raising prices through control of production.

I repeat that it is a price-fixing bill. It cannot find support under the interstate-commerce clause, notwithstanding the palpable efforts to chain it to that provision of the Constitution. It is a measure interfering with domestic production, with the rights and liberties of individuals, and with the rights and authority of sovereign States.

The Federal bureaucracy charged with the administration of the bill would undoubtedly constitute the largest governmental agency ever to be established in this country for the regulation of enterprise.

I am told that there are nearly 70,000 employees in the Department of Agriculture and in the various bureaus and agencies which are attached to that Department and subject to the control of the Secretary of Agriculture. An indication of the enormous size of this bureaucracy may be found in the provision authorizing the expenditure of $10,000,000 for the administration of the act. (Section 64 (b)). And it may be stated in passing that many millions of dollars annually are appropriated to pay the army of employees of the Agricultural Department. In addition, administrative committees may be paid an undetermined amount out of funds deducted from soil-conservation payments, parity payments, or surplus reserve funds. Section 62 (b) is indicative of that fact.

No one can successfully challenge the accuracy of the analysis made by the Senator from Vermont [Mr. AUSTIN] yesterday when he called attention to the enormous power which is given to the Secretary of Agriculture by this proposed act and, indeed, by other acts which have received the approval of Congress.

I call attention to section 62 (b), which is typical of other provisions, conferring improper power upon the Secretary of Agriculture under this section. Payment of these sums rests entirely in the hands of one man, the Secretary of Agriculture, entirely free from the usual requirements of law subjecting public expenditures to the Comptroller General of the United States.

I digress to remark that there seems to have been a purpose, not only an adroit but an avowed purpose, not to subject these expenditures to the control of the officer appointed by Congress to protect the legislative branch of the Government in the expenditures which are made by the executive Departments of the Government. However, concession is graciously made to the taxpayers in allowing the General Accounting Office the privilege of post-auditing the expenditures of the Secretary of Agriculture, but even here it is provided that the Secretary shall be permitted to examine the report of the Comptroller General and "point out errors therein," a unique and remarkable provision in our scheme of government (section 64 e).

The discretion vested in the Secretary of Agriculture does not, however, stop with the unrestricted expenditures of vast sums and the creation of an army of agents. He has powers vastly more enormous and uncontrolled, which, as I shall endeavor to show, would set up one individual as the dictator of agriculture, the absolute master of the methods of farm production, the quantities produced, and the prices paid for the controlled commodities.

Authority and power are given in an unprecedented manner to a dictator in the great field of agriculture. There is unmistakable evidence that efforts are being made to concentrate power in the hands of the Federal Government and make States mere geographical expressions. Their power is being taken away from them by this and by other means; the rights of individuals are being impaired by this as well as other measures, and the view seems to find advocates that the people are incompetent to govern themselves. The States are to be, as I have suggested, mere geographical expressions, and the Federal Government is to have increased power, so that it may control our lives, our very thoughts, and the economic and political policies by which we are governed.

TERMS OF THE BILL

The bill has nine titles, of which the first five relate to regulation and control of specified commodities.

Title I relates to wheat and corn and provides for adjustment contracts between the Secretary of Agriculture on the one hand and wheat and corn farmers on the other, who upon signing such contracts are termed "cooperators." Cooperators receive a promise of certain benefits in return for an undertaking to comply with certain requirements which may be imposed upon them. The benefits comprise surplus reserve loans, parity payments, and Soil Conservation Act payments, all of which are the lure, the promise of subsidy to seduce farmers and the people away from sound policies in the hope that they will obtain from the Treasury of the United States, from the taxpayers of the United States, gifts and subsidies and bounties in exchange for the abandonment of personal rights and the surrender of the authority of local communities and of the States.

Surplus reserve loans are to be made by a new agency, the Surplus Reserve Loan Corporation—established in title VII of the bill, capitalized at $100,000,000, and empowered to issue tax-exempt obligations up to five times that amount—such loans being made at the sole discretion of the Corporation, on conditions imposed by it, and secured only by the stocks of the commodity insured and stored in Government-approved storage facilities. Authority is committed to the Secretary of Agriculture through this Corporation, which he dominates and controls, to issue $500,000,000 of obligations for which the Federal Government is responsible.

Parity payments are sums based upon the ratio between current prices and an arbitrary base rate and paid to cooperators upon the estimated normal yield of their base acreage for the commodity covered. The normal yield and the base acreage are to be fixed for all farms by the Secretary of Agriculture through farm committees operating in such administrative units as the Secretary sees fit to establish. The acreage thus allotted establishes the position of the farmer not only for the receipt of parity payments under adjustment contracts, but also in respect of compulsory market quotas, which I shall later consider.

It will be noted that these three types of benefits constitute the lure which is hoped to suffice to bring all farmers within this so-called voluntary framework. In return for these benefits, these bounties, and gifts which are to be paid by the taxpayers, the farmer undertakes in his contract to divert such production of the forbidden commodity from his base acreage as may be determined by the Secretary of Agriculture, to engage in such farming and dairy practices as may be provided in the contract, or upon demand to store under seal up to the normal yield of 20 percent of his base acreage, as the Secretary may determine. Surplus reserve loans are available on amounts so stored. The foregoing constitutes the ever-normal-granary plan, a most fanciful plan, not founded upon common sense or upon such rational

concepts as should control in the determination of the practical things of life.

Taken altogether the program cannot be more aptly described than a proposal, under the guise of regulating commerce, to make expenditures of Federal funds in order to achieve a complete control over the production of agricultural commodities. Before discussing the vital constitutional issues with which we are immediately confronted, I desire to discuss the national quota system provided for in the bill. This envisages the outright control of the marketing of supplies of the enumerated commodities. This control, like the so-called voluntary features of the bill, is declared to be based upon the commerce power. The Secretary of Agriculture would be empowered to proclaim a quota in terms of the total quantity of a commodity which may be marketed and the percentage of base acreage whose yield may be marketed by each farmer, whether or not he has signed an adjustment contract. It is provided, however, that the quota shall not become effective for a commodity unless two-thirds of the producing farmers vote affirmatively in a referendum conducted by the Secretary of Agriculture. Sales by a farmer in excess of his allotted quota are declared to be a violation of law, punishable by a fine equivalent to 50 percent of the parity price—in the case of wheat and corn—and a fine of 75 percent of the purchase price in the case of tobacco.

In order to insure a favorable vote in the referendum it is provided that in the event that the producers reject a quota proposal surplus reserve loans are suspended. The direct result is that the farmer who has signed an adjustment contract whereby he assumes obligations in return for promised benefits is under a virtual compulsion to vote for the proposed quota on pain of foregoing his benefits if the quota is rejected. The burdens under the contract remain effective—the benefits are removed.

Certain specific features of the bill deserve special attention: (a) The Surplus Reserve Loan Corporation, established in title VII of the bill, would be authorized to issue tax-exempt obligations up to $500,000,000, guaranteed by the Treasury. The Corporation shall act, when designated for that purpose by the Secretary of the Treasury, as a depository of public money and as a governmental fiscal agent.

Think of setting up such an organization, making it a Government fiscal agent and committing the Government of the United States by its guaranty to the extent of $500,000,000, notwithstanding the Soil Conservation Act providing $500,000,000, for parity prices and what not. All these are inducements which are dangled in the face of the farmers of the United States to compel them—morally to compel them, if not legally to compel them—to sign these contracts and to accept the tyrannous, oppressive, and illegal provisions of this remarkable act.

The Corporation is vested with power to determine the character and necessity for its expenditures under this act, subject only to a post audit by the General Accounting Office. It should be noted that management of this Corporation is vested in a board of three persons, "employed in the Department of Agriculture, who shall be appointed by and hold office at the pleasure of the Secretary" (sec. 70). Moreover, the board is completely free to select its own employees, without regard to the civil-service laws, to define their authority and duties, and to delegate to them such of the powers vested in the Corporation as it may determine.

The picture above presented is truly a startling one. One man is given carte blanche to expend at least $700,000,000 as a fiscal agent of the Government, without control or restriction. He is given power of life and death over a corporation entrusted with the right to make and call loans with unqualified power to fix the amount, terms, and conditions thereof (sec. 5 b).

The Corporation shall act, when designated for that purpose by the Secretary of the Treasury, as a depository of public money and as a governmental fiscal agent.

Pardon me for restating that, but it is so important that I want its significance to be fully appreciated: The Corporation shall act, when designated for that purpose by the Secretary of the Treasury, as a depository of public money and as a governmental fiscal agent. The Corporation is vested with power to determine the character and necessity for its expenditures under this act, subject only to a postaudit by the General Accounting Office.

It should be noted that management of this Corporation is vested in a board of three persons, employed in the Department of Agriculture, who shall be appointed by and hold office at the pleasure of the Secretary. That is found in section 70. However, the board is completely free to select its own employees, without regard to the civil-service laws, to define their authority and duties, and delegate to them such of the powers vested in the Corporation as it may determine.

The picture just presented is truly a startling one. I cannot conceive of Democrats, if there be good old-fashioned Democrats who believe in our form of government, in the rights of the States and the rights of the individuals, accepting the philosophy of this bill, which it seems to me ought to shock the conscience of every Democrat throughout the land.

As I said, the picture which I have just presented is truly a startling one. One man is to be given carte blanche to spend at least $700,000,000 as a fiscal agent of the Government, without control or restriction. He is given power of life and death over a corporation entrusted with the right to make and call loans, with unqualified power to fix "the amount, terms, and conditions" thereof, and some of these vast powers may be delegated to any officer or employee.

I just said that carte blanche is given one man to expend at least $700,000,000 as a fiscal agent of the Government. Indeed, I have seen some figures that indicate that the amount is at least $1,000,000,000 annually. Yet the bill is reported to us without adequate information as to the burdens imposed upon the taxpayers of the United States. The President, be it said to his credit, has indicated opposition to a measure which would impose upon the taxpayers of the country a burden in excess of $500,000,000, the provision found in the Soil Conservation Act. Whether we shall heed the President in this matter I cannot say. It seems to me we have adopted the view that the Federal Government is to appropriate billions annually to meet State and local responsibilities.

Only a few days ago more than 100 mayors, if I remember the number correctly, from various parts of the United States came to Washington—for what purpose? Was it not to beg, to plead, to coerce, to cajole, or intimidate Federal officials and agencies in order that hundreds of millions of dollars might be obtained for their respective cities? We believed at one time in the capacity of the people to govern themselves. We believed that municipalities with the powers conferred upon them were competent to handle the municipal duties and responsibilities belonging to such corporations, and that the States were competent to deal with their problems; but now municipalities and counties and States seem to be abdicating their functions and responsibilities, and are coming to Congress and laying their burdens upon the doorstep of the Federal Government. It is a situation that is lamentable and indicates a subsidence of that fine spirit of democracy of local self-government which characterized our fathers and which must persist if this Republic shall endure.

I submit that no greater powers were ever asked for by any agency of the Government, nor could there be a more glaring example of delegation running riot, unanimously condemned by the Supreme Court in the Schechter N. R. A. case. The powers sought in the bill put to shame the code-making power invalidated by the Supreme Court.

The scheme of regulation envisaged in the bill requires the allotment of a base acreage and a normal yield per acre to each farm in the Nation producing one or more of the enumerated commodities. The bill provides, in sections 8, 31, 41, and 51, that these allotments, in the case of the several commodities, shall be made by the Secretary of Agriculture "through" the farm committees provided for elsewhere in the

bill. It is apparently contemplated merely that these committees shall post in the area for public inspection a list of the base acreages, normal yields, and marketing quotas, if any. That is found in section 60. Nevertheless, in the same section it is provided that a farmer dissatisfied with his allotment may obtain a review thereof by his local farm committee whose membership shall not include "any members of the committee of farmers making the determination."

It is impossible to definitely ascertain from this section which duties are vested in the Secretary, which are left to the farm committees, and how the special reviewing committees shall be established. I have already pointed out that the Secretary has complete authority to pay the farm committees for their services, without restriction, deducting for this purpose pro rata amounts from the sum available for benefits under the adjustment contracts. In the light of the further power of the Secretary to fix such administrative units as he sees fit, it is obvious that he would in fact, for good or evil, be given plenary power to determine the character of the committees, through the double-barreled weapons of gerrymandering and control of the purse strings.

The powers vested in the Secretary, however, far transcend the foregoing. In addition to fixing normal yields and base acreages, he is given, among others, the following enormous powers:

First. Equitably adjusting the allotments to take into account tillable acreage, type of soil, topography, and production facilities (sec. 8).

Mr. AUSTIN. Mr. President, will the Senator yield at that point for a question?

The PRESIDENT pro tempore. Does the Senator from Utah yield to the Senator from Vermont?

Mr. KING. Certainly.

Mr. AUSTIN. I should like to have the views of the Senator upon the meaning of the power referred to, and whether he interprets it to extend the power of passing upon controversies which naturally can arise between landlord and tenant respecting the management of the lands. In other words, does the Senator interpret those powers to be a delegation of or an attempt to delegate powers?

Mr. KING. Judicial powers?

Mr. AUSTIN. Yes; judicial powers. I should like to have the Senator's views about that matter.

Mr. KING. It would seem that the intent was to give the Secretary power to equitably adjust—that is, to sit as a court—the allotments, taking into account tillable acreage, type of soil, topography, and production facilities. The Secretary is not a judge—he has taken no oath as a judicial officer, but he is to exercise equity jurisdiction; and it would seem that he is to determine controversies between landlords and tenants, between farmers themselves, and to act in the capacity of a judge, though he does not have, and ought not to have, judicial authority. It may be contended that the word "equitably" means that he is to attempt to fairly decide controversies between the farmers, landlords, tenants, and so forth.

Mr. AUSTIN. Mr. President, will the Senator permit an interruption?

Mr. KING. I shall be glad to yield to the Senator from Vermont.

Mr. AUSTIN. I once heard a man described as not knowing much law but as being "hell on equity." I ask the Senator if he does not think that a man who is vested with such powers as are granted by this bill would have to be "hell on equity" to be able to administer that part of it. [Laughter.]

Mr. POPE. Mr. President, will the Senator from Utah yield for a question?

Mr. KING. I have not answered the question of the Senator from Vermont, but I yield to the Senator from Idaho.

Mr. POPE. The Senator is now referring to the determination of the allotment of acreage on the farm, is he not?

Mr. KING. I am referring to section 8, where the power is given to equitably adjust the allotments, taking into account tillable acreage, type of soil, topography, and production facilities.

Mr. POPE. That has to do with making allotments on the individual farms; and, if the Senator will observe carefully, that is not done by the Secretary at all. It is done by the county committees, who make the allotments to the individual farms. I am quite sure I am correct in that respect. The Secretary only makes the national allotment and the allotments to the States and to the administrative areas. The county committees make the allotments to the individual farms; and it is in connection with the individual farms, as I recall, that that language is used.

Mr. KING. I again assert that the powers vested in the Secretary relate to the equitable adjustment of allotments, and in doing so he may take into account tillable acreage, type of soil, topography, and so forth. If he does not act personally, he authorizes others to act. The Secretary has the final authority under the bill.

Mr. VANDENBERG. Mr. President, will the Senator yield?

Mr. KING. I yield to the Senator from Michigan.

Mr. VANDENBERG. I call the Senator's attention to the further fact that in the final analysis the power that counts is the power to pay a benefit and to identify the person who shall receive the benefit. That is what finally counts. Under the terms of the amendment on page 79 the Secretary determines who gets the money, the character and necessity of the payment, and finally, his findings are conclusive upon all other officers of the Government. In other words, he is not only a judge but he is a supreme court.

Mr. POPE. Mr. President, will the Senator from Utah yield on the point the Senator has just been discussing?

Mr. KING. I yield.

Mr. POPE. At the bottom of page 15 of the bill the Senator will observe under subdivision (d), that—

> Each such local allotment, after deducting the acreage devoted to the commodity on farms on which the commodity is not produced for market, shall be allotted, through the State, county, and local committees of farmers hereinafter provided, among the farms within the local administrative area on which the commodity is produced for market.

Then follows the language:

> Such farm allotments shall be equitably adjusted among such farms according to the tillable acreage, type of soil, topography, and production facilities.

I think it is perfectly clear—it is to every member of the Agricultural Committee—that the Secretary has nothing to do with making the farm allotments. They are made by the committee of farmers, who are elected by the farmers themselves. In connection with the discussion here about the Secretary's equitable powers and his equitable jurisdiction, I desired to call attention to the fact that the Secretary does not make the allotments at all.

Mr. KING. I differ with the Senator; and I will ask permission to insert in the RECORD at this point a number of provisions of the bill relating to the power of the Secretary, not only with respect to the matter just referred to, but also to other matters in the bill.

There being no objection, the matter referred to was ordered to be printed in the RECORD, as follows:

> SEC. 3. (a) In order more effectively to carry out the declared policy, the Secretary is authorized and directed to prepare adjustment contracts and to tender such contracts to farmers producing for market wheat or corn.

Section 8:

> (d) Each such local allotment, after deducting the acreage devoted to the commodity on farms on which the commodity is not produced for market, shall be allotted, through the State, county, and local committees of farmers hereinafter provided, among the farms within the local administrative area on which the commodity is produced for market. Such farm allotments shall be equitably adjusted among such farms according to the tillable acreage, type of soil, topography, and production facilities.
>
> SEC. 9. (a) Whenever the total supply of wheat or corn as of the beginning of the marketing year has been finally ascertained and proclaimed by the Secretary, he shall thereupon, after hearing as provided, hereinafter, establish and proclaim the following:
>
> First, the ever-normal granary for such commodity during such marketing year; but no ever-normal granary shall be established or

proclaimed for wheat or corn for any marketing year if the Secretary has reason to believe that during the first 3 months of such marketing year the current average farm price for the commodity shall be more than the parity price therefor.

Second, the percentage, if any, of the soil-depleting base acreage for the commodity to be diverted from the production thereof during such marketing year in order to effectuate the declared policy * * *.

(b) Adjustment contracts shall require cooperators engaged in the production of wheat or corn for market to divert from the production of the commodity during any marketing year the percentage of the soil-depleting base acreage for the commodity proclaimed by the Secretary under this section. Such contracts shall further provide that such cooperator shall engage in such soil-maintenance, soil-building, and dairy practices with respect to his soil-depleting base acreage diverted from the production of the commodity as shall be provided in his adjustment contract.

(c) Adjustment contracts shall require a cooperator engaged in the production of wheat or corn for market to store under seal his stock of the current crop thereof up to an amount not exceeding the normal yield of 20 percent of his farm's soil-depleting base acreage for such commodity if the Secretary, at any time during the marketing year for such crop, or within 30 days prior thereto, determines that such storage is necessary in order to carry out during such marketing year the declared policy of this act with respect to the commodity; but such storage shall not be required if the Secretary has reason to believe that during the ensuing 3 months the current average farm price for the commodity will be more than the parity price therefor. Such storage shall be for the period of the marketing year or such shorter period as the Secretary shall prescribe. * * *

(c) If any cooperator during any marketing year produces corn or wheat on acreage in excess of his soil-depleting base acreage for such commodity or fails to divert from the production of any such commodity the percentage of his soil-depleting base acreage therefor required pursuant to this section, then for such marketing year such cooperator shall be deemed a noncooperator and shall not be entitled to surplus reserve loans or parity payments with respect to his production of the commodity for such marketing year.

Section 21:

(e) The Secretary shall provide, through the State, county, and local committees of farmers hereinafter provided, for farm marketing quotas which shall fix the quantity of the commodity which may be marketed from the farm. Such farm marketing quotas shall be established for each farm on which the farmer (whether or not a cooperator) is engaged in producing the commodity for market.

(f) If by reason of drought, war, or other national emergency the Secretary has reason to believe that the national marketing quota for any commodity should be increased, then the Secretary shall proclaim that fact and, after due notice and opportunity for public hearing to interested parties, shall, to the extent necessary to meet such emergency, increase the marketing quotas within any producing area.

Section 22:

(c) Whenever, after investigation, the Secretary has reason to believe that any farmer has engaged in any unfair agricultural practice that affects interstate or foreign commerce and so certifies to the appropriate district attorney of the United States, it shall be the duty of the district attorney, under the direction of the Attorney General, to institute a civil action in the name of the United States for the recovery of the penalty payable with respect to the violation.

SEC. 32. (a) Whenever, after due notice and opportunity for public hearing to interested parties, the Secretary determines that the national marketing quota then in effect does not make available a normal supply of cotton, the Secretary shall increase such national marketing quota so as to make available during the marketing year a normal supply.

(b) If, by reason of drought, war, or other national emergency, or increase in exports, the Secretary has reason to believe that the national marketing quota should be increased or suspended, then the Secretary shall proclaim that fact and, after due notice and opportunity for public hearing to interested parties, shall to the extent necessary to meet such emergency increase the farm marketing quotas within any production area, or suspend marketing quotas. No farm marketing quota for any farm shall be reduced after an increase pursuant to this subsection.

(c) The Secretary shall provide by regulations for the identification of cotton produced on the allotted acreage in such way as to afford aid in discovering and identifying cotton sold or offered for sale which was not produced on acreage included in any farm allotment. Producers who sell cotton produced on land not included in such producers' allotted acreage shall be ineligible for Government cotton loans during such marketing year.

(d) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce the provisions of this title. If and when the Secretary shall so request, it shall be the duty of the several district attorneys in their respective districts, under the direction of the Attorney General, to institute proceedings to collect the penalties provided for under this section. The remedies provided for herein shall be in addition to, and not exclusive of, any of the remedies or penalties under existing law.

SEC. 34. The Secretary shall provide, through the State, county, and local committees of farmers hereinafter authorized, for the making of allotments to farms of the national marketing quota and, when legally authorized to do so, apportion a number of acres from which cotton produced may move in interstate or foreign commerce, and for measuring all farms and ascertaining whether an excess over the apportionment of any farm under the national marketing quota has been planted to cotton. If an excess of planted-to-cotton acreage is found on any farm, the committee shall promptly file with the State committee a written report stating the total acreage in cultivation and the acreage then planted to cotton.

Section 62 (B):

There shall be a State committee for each State composed of the State director of agricultural extension, ex officio, and of four farmers resident within the State to be appointed by the Secretary. * * *

The Secretary shall make such regulations as are necessary to carry out the provisions of this subsection, including regulations to carry out the functions of the respective committees and for the administration within any State, through the State, county, and local committees within such State, of such programs. No payments shall be made to a member of any State, county, or local committee of any State for compensation or otherwise except solely for services performed or expenses incurred in administering such programs within such State.

Section 64 (d):

The Secretary shall determine the character and necessity for expenditures under this act; the Soil Conservation and Domestic Allotment Act, as amended; and the Sugar Act of 1937; the manner in which they shall be incurred and allowed, the persons to whom payments shall be made, including the persons entitled to receive the payments in the event of the death, incompetency, or disappearance of the persons who otherwise would have been entitled to receive the payments, and shall also prescribe voucher forms and the forms in support thereof, without regard to the provisions of any other laws governing the expenditure of public funds, and such determinations and forms shall be final and conclusive upon all other officers of the Government.

Mr. McCARRAN. Mr. President, will the Senator from Utah yield to me so that I may ask a question of the author of the bill?

Mr. KING. I yield.

Mr. McCARRAN. Are we to understand from that provision that the action of the local committee—which, I understand the Senator from Idaho to contend, has authority to make the allotments—is final?

Mr. POPE. There are a number of provisions in the bill giving to the farmer to whom an allotment is made an opportunity for review.

Mr. McCARRAN. May I ask who makes the review?

Mr. POPE. In the first place, the review is made by a State committee, as I recall; then later by a representative of the Department or the Secretary; and still later, if the farmer is not satisfied, by the Federal court in the district.

Mr. McCARRAN. If the Senator from Utah will permit me again, my reading of the bill leads me to the belief that while what the Senator contends for may be true as to the local committee in the first instance, the final consideration and determination in the long run is that of the Secretary.

Mr. POPE. I will say to the Senator that he is entirely mistaken about that, because the final power that passes upon the question is the Federal court of the district in which the farmer lives. It is true that in his appeals at one time his allotment is reviewed by a representative of the Secretary.

Mr. McCARRAN. That is true.

Mr. POPE. But if he is dissatisfied, he then may appeal to the courts. So I should say that the final power that determines the matter is the Federal district court.

Mr. McCARRAN. Of course, the Senator will admit that by the time a farmer in Idaho got to the Federal court, the entire season would be over and there would not be much for the court to determine.

Mr. POPE. I think that is not quite a fair statement, because provision is made here for very expeditious and prompt handling of the matter.

Mr. KING. Mr. President, I think a correct interpretation of the bill will convince any fair-minded person that the ultimate power rests with the Secretary. He has the power to establish the ever-normal granary; and if he "has reason to believe"—I am now quoting the bill—that the "current

average farm price" will exceed the parity price, then he may act in the matter, and his action is determining. He has the power to declare the percentage of acreage which shall be diverted from production, this finding being binding upon the cooperator. Directly or indirectly, he has the power to order cooperators—he is the final judge in the matter—to engage in such farming and dairying practices as he may see fit to include in the individual adjustment contract. He has power to require cooperators to store up, under seal, up to the normal yield of 20 percent of their base acreage. He has the power to suspend payments to cooperators unless the farmer grows upon his farm "an acreage of food and feed crops sufficient to meet home consumption requirements." In other words, the Secretary may order a farmer, on pain of forfeiting his benefits, to plant a certain area of his land to crops for consumption at home. Can a greater deprivation of the free and unrestricted use of private property be imagined? It must be remembered that this requirement is entirely distinct from the ever-normal granary plan or other crop-control features of the proposed legislation.

The Secretary has the authority to establish national and individual farm marketing quotas, if he believes that the total supply will exceed the normal supply by a given percentage. It is true that this proclamation becomes effective only if agreed to by two-thirds of the farmers producing the particular commodity; but note that the voting in the referendum is not weighted to take account of the acreage or production of those most vitally affected. Note, also, that the Secretary can virtually control the votes of cooperators through the power to suspend surplus reserve loans in the event that the producers reject a proposed quota.

As to the legality of vesting the lawmaking power in private persons, I shall comment upon this phase of the proposed legislation in connection with my discussion of the constitutionality of the bill as a whole, as well as in its several parts.

The penalties for violation of the quota restrictions merit special attention. In the case of wheat and corn the penalty is assessed at the rate of 50 percent of the parity price. The parity price is fixed by the Secretary and is based upon a comparison of current buying power with buying power in a base period, adjusted so as to reflect current interest and tax payments on farm real estate. The penalty, therefore, varies and is not ascertainable in advance, since it is to be ascertained and proclaimed on the first day of each month.

In the case of cotton the penalty for excess marketing is 75 percent of the purchase price, the seller and purchaser being liable. In addition such sellers are deprived of soil-conservation and allotment payments, and in applying for such payments must submit affidavits of compliance.

In the case of tobacco, penalties are imposed only upon purchasers and may be deducted by the purchaser from the sale price. I digress to remark that that is a very adroit way of inducing the tobacco producers to accept the terms of this bill. They may exceed the requirements imposed upon them, but the purchaser of the tobacco is the one who is to be penalized; not the farmer. This obviously requires the maintenance by purchasers and processors of complete records, which the bill in fact provides; and such records must be produced upon demand, not only in the case of buyers, but also by warehousemen and commerce carriers.

Provisions in the case of rice are similar to those for cotton.

IMPORTANT CONSTITUTIONAL QUESTIONS RAISED BY THE BILL

The vast scope of this bill with respect to the agricultural life of the Nation virtually transfers to the Federal Government complete control over the production and marketing of the five basic crops covered therein. The bill would wrest such powers from the States, not to meet an emergency, not for a temporary period, but in perpetuity. By the broad declaration that these commodities are "affected with a national public interest," the Federal Government proposes to control production and marketing by a dual system, including so-called voluntary features and outright admitted compulsions. The basic constitutional questions, in my view, are the following:

First. May the Congress control the production and marketing by the producer of commodities under the guise of regulating commerce and under the welfare clause?

Second. May the Congress delegate to an administrative agency the vast powers here sought and which would be granted by the pending bill?

I believe that both of these questions must clearly be answered in the negative. We are not without a very definite guide to lead us to the proper conclusion. The production of agricultural commodities and the manufacture of industrial goods are both local matters subject only to State regulation. The proposition is so well settled that there is hardly any need to multiply cases or decisions to establish a point which everyone must concede. Production is not commerce, even though the goods produced are expected to enter and do in fact enter commerce. In view of the Schechter case and the Butler case, holding invalid the N. R. A. and the A. A. A., respectively, I see no room for extended discussion. The general principle has been well established from the time of Gibbons against Ogden, decided by Chief Justice Marshall, and has ever since without exception been adhered to both by the courts and by Congress. Appendix A, which I am submitting, quotes pertinent extracts from decisions of the United States Supreme Court, all of which point the distinction between production and commerce.

It is asserted, however, that the control of the production and distribution of the commodities specified in the pending bill are necessitated in order to establish a free flow of commerce and are justified by the welfare clause of the Constitution.

I digress to remark that many crimes are committed under the so-called general-welfare clause of the Constitution. Everyone who has any knowledge of the Constitution, and even many who do not have such knowledge, know that the general-welfare clause is not a grant of power. Yet there are some courts and some lawyers without knowledge or distinction, who aver that under the general-welfare clause the Government can levy taxes for any purpose or for all purposes and expend the money collected without any restriction whatever. That, of course, would mean that the delegated powers, the enumerated powers, would be nullified by the so-called general grant in the general-welfare clause.

The protection of the free flow of commerce is not subject to Federal regulation except insofar as commerce is being regulated. As the Supreme Court has repeatedly held, the subject matter of the regulation must be interstate commerce, and the regulation must in fact be a regulation of such commerce. We have to look no further than the decision of the Supreme Court in the Butler case, which clearly stands in the way of and condemns the proposed enactment. Although in that decision the Court was considering the power of the Federal Government to impose processing taxes and expend funds derived therefrom for the purposes of agricultural control, the Court pointed out that the tax was invalid because the control of agriculture was beyond the power of the Federal Government, and, since the tax was a mere incident of the regulation of agriculture and production, the tax must fall along with the remainder of the Agricultural Adjustment Act. The following paragraph from the majority opinion of the Court concisely and clearly illustrates the basic defect in the pending bill:

> The third clause [of the Constitution] endows the Congress with power to regulate commerce * * * among the several States. Despite a reference in its first section to a burden upon, and an obstruction of the normal currents of commerce, the act under review does not purport to regulate transactions in interstate or foreign commerce. Its stated purpose is the control of agricultural production—
>
> Just as the purpose of the pending bill is—
>
> a purely local activity, in an effort to raise the prices paid the farmers.

As I stated at the outset, this is a bill to fix prices. It is not a bill to regulate commerce, it is a bill to fix prices, to

increase prices, and to burden particularly the industrial sections of the United States, and indirectly, if not directly, the farmers themselves.

Compare the last sentence quoted from the decision of the Supreme Court with the sentence I have previously quoted from the report of the Committee on Agriculture and Forestry on the pending bill. The committee states, on page 14 of its report, that the bill "proposes a plan for raising prices through control of production." Obviously, this is a bill not to control interstate commerce but to control production and to raise and fix prices.

It is true that in the Agricultural Adjustment Act of 1933, the Government did not attempt to uphold the validity of the act on the basis of the commerce clause. This in itself is of the utmost significance as indicating the true ground upon which the condemned act stood and the pending bill rests. It is obvious that Congress cannot enlarge its powers through the simple expedient of making findings of fact and declarations of policy entirely at odds with the true purpose and scope of the regulations proposed. Indeed, an examination of the controls proposed in the pending bill shows clearly that nothing new or different is proposed than was present in the previous agricultural act, except that the bill goes even further and introduces the feature of compulsory marketing quotas which but add another evil to those present in the previously condemned legislation.

The subterfuge adopted is so apparent as to lead one to make the charitable assumption that the most which the framers of the bill hope for is to use the pretext of the commerce power for the indirect purpose of controlling production and local marketing of agricultural products. It will undoubtedly be conceded by the sponsors of the bill that Congress may not directly regulate production, except under the guise of exercising some other power. Yet how frequently and consistently the Supreme Court has held that Congress may not employ an acknowledged constitutional power for the purpose of effectuating regulation in a forbidden field! Precisely the same consideration applies in the asserted use of the power to lay taxes and appropriate moneys for the general welfare. As I shall show, both the majority and the minority opinions in the Butler case were equally emphatic in pointing out that the power of Congress to provide for the general welfare qualifies the power to lay and collect taxes. The Government in fact conceded that this was so.

It is clear that the Congress of the United States is authorized under the Constitution to levy and collect taxes. May it provide for the taxation of an industry with a proviso for the remission of these taxes, in whole or in part, to those in that industry who will comply with regulations of the Federal Government as to wages, hours, and working conditions? The Federal Government has the power to regulate interstate commerce. May it establish regulations over wages, hours, and working conditions, local in nature, in a private industry, and enforce such regulations by denying to nonconformers the right to engage in interstate commerce?

I admit that there are persons who believe that we can fix wages and hours of labor under the commerce clause, and subject every manufacturer and every farmer to the devastating power of the Federal Government in relation to local matters.

The Federal Government has undoubted power to regulate the Postal Service. May it establish regulation of local labor relations and enforce such regulation by denying to violators the right to use the mails? The Government as a proprietor has not only the right but the duty to let all necessary contracts, including those for construction of public buildings, and the furnishing of supplies and materials. It also has within recent years become the Nation's greatest banker, and, as such, is engaged in making loans and grants to private citizens and institutions throughout the land for innumerable purposes. May it say to all who wish to bid on Government contracts, or to obtain loans or grants, that they will not be permitted to do so unless they will agree to abide by conditions laid down by the Government with respect to wages they shall pay, the hours they shall permit employees to work, the relations which shall subsist between them and their employees, and the crops they shall grow?

These illustrations have been given in detail, not because they are fanciful or hypothetical, but because it is seriously argued in many quarters that the express powers given to Congress under the Constitution may be used as a means of accomplishing regulations of subjects beyond the jurisdiction of Congress when acting directly.

The doctrine that a governmental power cannot be used merely as a means of effectuating a forbidden purpose is not new; it has been reiterated from time to time, not only by the courts of the United States, but by the courts of practically all the separate States.

For instance in the fairly recent case of *Linder* v. *United States* (268 U. S. 17), the Supreme Court of the United States said:

> Congress cannot, under the pretext of executing delegated power, pass laws for the accomplishment of objects not intrusted to the Federal Government. And we accept as established doctrine that any provision of an act of Congress ostensibly enacted under power granted by the Constitution, not naturally and reasonably adapted to the effective exercise of such power, but solely to the achievement of something plainly within power reserved to the States, is invalid, and cannot be enforced.

Accordingly, the Supreme Court of the United States was announcing no new or revolutionary doctrine when it decided that the Agricultural Adjustment Act was unconstitutional, because it was an attempt to use the taxing power for the purpose of accomplishing Federal regulation of a subject not within the jurisdiction of the Federal Government, namely, compulsory regulation of agricultural production.

Mr. GILLETTE. Mr. President——

The PRESIDING OFFICER (Mr. THOMAS of Utah in the chair). Does the Senator from Utah yield to the Senator from Iowa?

Mr. KING. I yield.

Mr. GILLETTE. I dislike to interrupt the thread of the Senator's argument, but I should like to call attention at this point to a matter under discussion a little while ago as to the extent to which the proposed law is to be administered by local committees.

On page 73 of the bill there is a provision entitled "Utilization of local agencies." Under the terms of the bill it is provided that the Secretary may set up such administrative units as he sees fit. Farmers living within these administrative units may select the local committees. But nowhere in the bill is it provided that such committees are clothed with any authority whatever, except, in line 13 on page 74, that—

> The Secretary shall make such regulations as are necessary—

for the administration of the bill and its purpose through these committees.

On page 59 the committees are charged with the duty of posting the assignments of allotments; and that, so far as I have been able to discover, is the only place in the bill where they are charged with a duty.

On pages 14 and 15 it is expressly provided that the allotment of acreage—and in another provision the marketing quotas—shall be assigned to the State, to the county, to the administrative unit, and to the farm, through the State, the county, and the local committees—not by them, but through them. The bill expressly provides that the Secretary himself shall select the State committee and determine the administrative units. I do not want any misunderstanding to be had as to the extent of the centralization of the bill.

Mr. KING. Mr. President, I may not have understood the full import of the Senator's statement, but I am quite certain that under the terms of the bill the Secretary of Agriculture is given almost unlimited authority and committees or groups provided for in the bill are subject to his control.

Mr. GILLETTE. Mr. President, will the Senator again yield?

Mr. KING. I yield.

Mr. GILLETTE. I am sorry I did not make my statement clearer. What I said was in support of the Senator's position,

taken in the argument made by him a short time ago, that the power was centralized in the Secretary, and was not, as contended by the junior Senator from Idaho [Mr. POPE], in the local committee.

Mr. KING. I thank the Senator from Iowa. I was diverted for a moment when he was speaking and did not get the first part of the Senator's statement. I thank the Senator for supporting the views I have expressed.

Mr. President, there can be no question as to the power of the Secretary of Agriculture under the terms of the bill. He is the power behind the throne and has dictatorial authority. He determines the agencies for the States, counties, and districts and prescribes their duties and responsibilities. I do not recall a measure—except a military measure in times of war—which confers greater authority upon a Federal official than that granted under the terms of this bill.

Unfortunately, the conference of this vast power upon the Secretary is in harmony with the views of some Democrats and, of course, will meet with the approval of Socialists and those who seek to increase the power of the Federal Government at the expense of the States and of the rights of individuals.

The view is entertained by some persons that local self-government is unable to meet its responsibilities; that the people cannot democratically govern themselves; and that the authority of the Federal Government must be enlarged even to the extent of imperiling the States and impinging upon the rights of individuals. There are some who seem to think that the farmers lack the ability to operate their own farms, determine the crops which they shall plant, and the policies which they shall pursue with respect to their own business. There are agencies of the Government which seek to increase their authority regardless of constitutional limitations or the rights of individuals.

It is evident that there is a movement which seeks the exaltation of the Federal Government and the diminishing of the authority and power of the people themselves. This movement contemplates increased bureaucratic control and, indeed, regimentation of the lives, conduct, and pursuits of the people. If unchecked, it would culminate in the erection of a government of men and not of law—a government of Federal bureaus, autocratic and, in many instances, irresponsible, and not a government of the people.

Mr. VANDENBERG. Mr. President, will the Senator yield?

Mr. KING. I yield.

Mr. VANDENBERG. I submit a further exhibit to the Senator in line with the observation he has just offered the Senate. I call his attention to the situation in Brazil, where the creator of the so-called corporate state started with the dissolution of the judiciary, then proceeded on November 27, according to the Associated Press, at a great public ceremony to burn the flags of the Republic's 20 States, followed on December 3 with a decree disbanding all political parties; all of which is extremely interesting and significant, particularly in the light of the fact that when the distinguished President of the United States visited Rio in the course of his "good neighbor" journey to the southland he stated, according to the New York Times, on November 28—

> It was two people who invented the New Deal—the President of Brazil and the President of the United States.

Mr. COPELAND. Mr. President, will the Senator yield?

Mr. KING. I yield.

Mr. COPELAND. I think the Senator is doing well to call to the attention of the public what he has in mind. The unfortunate thing about the situation, as I see it, is that the majority of the people of our country at the present moment are hypnotized by this philosophy of government. They have accepted it as desirable. They seem at the moment cheerfully to be governed by this philosophy. I think probably if they ever hear the scrapings on the bottom of the Treasury there may be a change of sentiment; but the Treasury seems to be, like the widow's cruse, bottomless. At least ways are found to provide money, whether or not they are wise ways.

The Senator does well, I think, to present his views, to give wings to them in order that the great public in America may become conscious of what is going on. Unless there are those in high places, on the watch tower, to give warning, disaster will come upon us. I have no question about that.

Mr. KING. I think the condition of the country is precarious. I think imminent disaster is before us. Unless the multitude of our people are aroused to an understanding of the situation, we are bound to have serious trouble. Perhaps it may be necessary for many, in high and in low places, too, to make personal sacrifices in order to accomplish the things the Senator has in mind; but certainly it is wise, as I view it, that the country should be informed of the truth of the situation.

It would seem unnecessary, if not improper, to adjure the people of this Republic to protect and defend it and to resist malign influences and the adoption of policies or principles calculated to imperil its existence. Unfortunately there are some who would barter away a priceless heritage, and convert this Republic into a socialistic or nazi government. However, there are evidences of the existence in the United States of communistic organizations and of movements hostile to the maintenance of democratic institutions.

The Constitution wisely divides the powers of government and provides for an independent judiciary. Notwithstanding that fact, there are some who would deprive the judicial department of its rightful place, and subordinate it to the legislative or executive departments, or both. Only a short time ago efforts were made by some of our citizens to weaken, if not destroy, one of the pillars of the Republic, namely, the Supreme Court of the United States. Happily the efforts did not succeed.

History is replete with examples of the liberties of people being sacrificed upon the altar of autocratic rule. Liberties which have long been enjoyed are not lost overnight. Liberty is a plant of slow growth but it has not always withstood the storms and tempests by which it was attacked. We are advised that in many countries constitutions were drafted similar to that of this Republic and democratic institutions were established which promised liberty and justice; but we learn that in many instances the constitutions adopted and the institutions provided were changed or disregarded, and dictatorial forms of government imposed upon the people.

Sir Henry Maine, in his work on Ancient Law, indicates that democracies are fragile and they are often superseded by autocratic governments. No government is promised immortality; but I cannot help but believe that this Republic will survive the storms which may beset it, and that it will endure for centuries to come and constitute a beacon light for the guidance of the peoples of other lands.

I have, upon various occasions, stated that my religious views have led me to the conviction that a Divine Providence guided the fathers of the Republic; and that the same divine power will protect it now and in the future, and that it will be a symbol of liberty and justice, and an ensign set upon the heights of the new world to inspire and guide this and future generations. I cannot help but believe that the American people will not abandon their faith in democratic principles, nor that they will follow the dangerous paths of socialism or communism, but will resist all sinister forces that seek to undermine the Constitution and to destroy the foundations of this Republic. However, we must be on guard against un-American policies or forces which seek to introduce alien principles and policies which are accepted in some other lands. Efforts to weaken the States and to crown the Federal Government with authority and power not conferred upon it should be thwarted and the utmost diligence exhibited by patriotic Americans to defend and preserve the form of government bequeathed to us by the fathers.

Mr. COPELAND. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from New York?

Mr. KING. I yield.

Mr. COPELAND. Mr. President, I honor the Senator from Utah for his convictions and for his own religious faith. I wish to remind him, however, that if the philosophy of my

dear little mother is correct we need to have something more than mere faith.

Mr. KING. Yes; "faith without works is dead."

Mr. COPELAND. My mother, a reverent woman, used to say, "You can take all the pins off the pin cushion and pray to the Almighty from now to kingdom come to put them back, but He will not do it, because you can do it yourself." I think that God Almighty expects us to do for ourselves those things which are in our power to do. If we simply sit down, fold our hands, and say we are going to leave it to High Heaven, we will not get much sympathy, I fear, up there.

We have it in our own hands to make the needed correction of affairs, but that correction will not follow until the Senator from Utah and others like him shall impress upon the American people the route they are taking and the ultimate end of our Government as we understand it. As the Senator has said, socialism and communism and radicalism and other subversive movements are spreading in America, and unless every Member of the Congress and every man in high places does his duty, there is only one end, as I see it. Those who lived in the days of the Roman Empire looked upon the seven hills of Rome as eternal and everlasting; they thought that their government must last and their system prevail, but it did not. So, as I see it, we need to have not only faith in God, but also, as the Senator has suggested, we need to apply good works along with our faith.

Mr. MINTON. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Indiana?

Mr. KING. I yield.

Mr. MINTON. I just came into the Chamber; I have heard these lamentations about socialism and communism and gained the impression that they were right here in Washington. I have heard it said that they are in this Department and that Department. Will the Senator be good enough to specify? I should like to know where they are. I do not know any Communists. Perhaps they are here. If they are, I should like to meet one. I never have met one.

Mr. KING. I may say to the Senator, if he is directing his remarks to me, that if he has not found some Socialists and Communists in the United States, I am surprised at knowing of his insatiable desire to learn.

Mr. CHAVEZ. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from New Mexico?

Mr. KING. I yield.

Mr. CHAVEZ. I dislike very much to disagree with the Senator from Indiana, but I could tell him of one Department in Washington that is socializing and communizing citizens who were born in this country. All he has to do is to go to the Indian Bureau, and he will find that Bureau communizing to perfection, as much as could be done elsewhere outside the boundaries of our country.

Mr. MINTON. Mr. President——

Mr. KING. I do not wish to be diverted from the subject. I desire neither to discuss nor introduce extraneous subjects.

Mr. MINTON. I merely thought perhaps the Senator could name some of the Departments where communism exists. I myself do not know about them; I have heard talk about them, and I, for one, thought the Senator might have the specifications or a chart.

Mr. KING. I do not know that I made reference to any such Department, but I have no doubt that in some of the Departments the Senator will find activities that are not consistent with our form of government.

Mr. President, before these interruptions I was referring to decisions of the Supreme Court of the United States, and was about to refer to the case of *Hammer* v. *Dagenhart* (247 U. S. 251), in which the Supreme Court held invalid an act of Congress which undertook to deny the facilities of interstate commerce to those employing child labor in violation of a Federal act. There was nothing harmful in the products themselves; they were legitimate articles of commerce. There was nothing unwholesome about them; they were not contraband; they were not diseased; they could not in any way contaminate the commerce of which they were a part, they were quite as useful for the purposes of sale and consumption as though they had been produced by adults. Accordingly, the Supreme Court announced a doctrine as old as the Constitution itself when it held that since Congress could not directly prohibit or regulate the labor of children in local employments, it could not accomplish that regulation by denying to violators the use of the facilities of interstate commerce.

Turning attention again to the proposed legislation, is it not obvious that the bill is fatally defective from still another standpoint, that of the tenth amendment to the Constitution of the United States? The Supreme Court in the Butler case declared that the 1933 act—

> Invades the reserved rights of the States. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the Federal Government * * *.

In discussing the tenth amendment in the Butler case, the Court stated:

> From the accepted doctrine that the United States is a Government of delegated powers, it follows that those not expressly granted, or reasonably to be implied from such as are conferred, are reserved to the States or to the people. To forestall any suggestion to the contrary the tenth amendment was adopted. The same proposition, otherwise stated, is that powers not granted are prohibited. None to regulate production is given, and therefore legislation by Congress for that purpose is forbidden.

The Government attempted to defend the 1933 act by arguing that its controls were purely voluntary. As is well known, the Court rejected this artifice, pointing out that the 1933 act not only was illegal because it purchased compliance, as this bill seeks to do, but because it in fact imposed compulsions through the expedient of conferring or withholding unlimited benefits, which the Court showed was in fact the power to coerce or destroy. But, of course, the present bill does not content itself with so-called voluntary features. The power to coerce or destroy is made more manifest by the provisions of the bill, which I have discussed above, relating to national quotas in all the covered commodities. Indeed, in the case of tobacco and rice, no provision whatever is made except for compulsory quota restrictions. The drafters of the bill have apparently elected to stake their all upon the hope that the Supreme Court will completely disregard all of its previous decisions, both majority and minority, and uphold the more drastic features of a bill in the face of the Butler case which rejected provisions less severe.

But the bill, in my opinion, is unconstitutional not only because it has no constitutional basis on which to rest but also because of the enormous delegation of power which it vests in the Secretary of Agriculture.

I shall now briefly discuss the second basic constitutional question which, as I see it, involves the unlawful delegation of powers to the Secretary of Agriculture as well as to the farm committees which are provided for in the bill. I have indicated some of the powers which would be vested by the bill in the Secretary. Briefly summarizing, he may fix not only normal yields and base acreages for all farms throughout the breadth of the country producing the covered commodities, but he may, in addition, establish the so-called ever-normal granary, he may declare the percentage of acreage to be diverted from production, he may order farmers to engage in such soil, farming, and dairying practices as he sees fit, he may require the storing under seal of a percentage of every farmer's yield, he may establish national quotas and individual farm marketing quotas, he may decree the percentage of farm land to be planted in products for home consumption. But that is not all. He may, in his own discretion, suspend national and individual quotas if he believes that a national emergency, a drought, a war, or any other condition impels him to do so. He may, pursuant to this power, increase marketing quotas in any area (sec. 21). Even the imposition of penalties for violation of the bill can, in effect, be suspended by him because of the provision that suits to recover such penalties may not be begun by the

United States District Attorney until after the Secretary of Agriculture has made a certification requesting such prosecution.

Under this bill he will possess authority to determine when a man shall be prosecuted and he will be able to prevent a man from being prosecuted by certifying to the Attorney General, though the law has been violated, that he does not want the violator prosecuted.

Moreover, he is given broad powers to demand books and records from farmers and their purchasers, the failure to keep records and make reports being made a misdemeanor by the terms of the bill (sec. 22). I have shown that he is given untrammeled power over the terms of office and tenure of the Surplus Reserve Corporation officials and that through this power he may spend as he pleases, though no one knows how much. It has been estimated as high as $1,000,000,000, but certainly $500,000,000 authorized by the Soil Conservation Act and all amounts that may be necessary to establish parity and to set in operation this hundred-million-dollar corporation, with authority to impose obligations which the Government guarantees up to $500,000,000. The Secretary of Agriculture may also pay farmer committees for their services without restrictions as to budgeted amounts.

I confess to some surprise that Senators are willing to confer almost unlimited power upon a Federal agency—authority to impose upon the people a vast army of employees whose compensation must be paid by the farmers and by the people at a cost of millions of dollars annually. The farmers and the producers will be subject to constant surveillance and policies of regimentation, which in the end will prove oppressive and dangerous. As I read the bill the salaries, per diem and expenses of this great army will be fixed and determined by the Secretary of Agriculture or his representatives.

None of his expenditures is subject to approval or preauditing by the General Accounting Office of the United States. The so-called standards to guide the Secretary in the determination of base acreages, normal yields, normal supply, parity payments, diversion of acreage, marketing quotas, are found, upon examination, not to be standards at all in any true sense of the word. For example, as the report of the Senate Agriculture Committee itself points out, allotments of national and individual farm quotas are to be "equitably adjusted among the individual farms within a local administrative area according to tillable acreage, type of soil, topography, and production facilities." I quote that from page 3 of the committee report. Nor can an aggrieved farmer obtain any adequate judicial redress from an unjust allotment. The bill carefully states that "the review by the court shall be limited to questions of law, and findings of fact by the reviewing officer when supported by substantial evidence shall be conclusive." (Section 60d.) Even a brief scrutiny of the definitions contained in section 61 of the bill reveals that the Secretary of Agriculture would be authorized to base his findings of parity prices, normal yields, reserve supply levels, and ever-normal granary upon such data as to him seemed good and sufficient, or without regard to any data whatever. He may reject part or all. He may say the evidence is adequate or inadequate. He is to be the sole judge to determine the adequacy or inadequacy of the evidence or the facts presented.

I submit that there has never been a proposal before the Senate containing a broader and more unconfirmed delegation of power to any administrative officer in times of peace.

An examination of the decisions of the Supreme Court of the United States in the Schechter and in the Panama Refining Co. cases clearly indicates that if the measure before us becomes law and reaches the Supreme Court of the United States its invalidity will be declared.

Referring to the less drastic delegation of power in the Schechter case, Justice Cardozo, a great judge and a great liberal judge, joined his colleagues in a unanimous opinion, declaring that such attempted delegation of authority could not be sustained. He stated:

> This Court has held that delegation may be unlawful though the act to be performed is definite and single, if the necessity, time, and occasion of performance have been left in the end to the discretion of the delegate. * * * Here, in the case before us, is an attempt at delegation not confined to any single act nor to any class or group of acts identified or described by reference to a standard. Here, in effect, is a roving commission to inquire into evils and, upon discovery, to correct them.

Again, in the Panama Refining Co. case, the Chief Justice of the United States Supreme Court, speaking for eight Justices, condemned the wide powers vested in the President under section 9 of the National Industrial Recovery Act. Like the sections of the pending bill vesting the power to proclaim marketing quotas, section 9 of the Recovery Act purported to authorize the President to pass a prohibitory law. The Chief Justice pointed out that that act did not set up a standard for the President's action and did not require any finding by the President in the exercise of the authority to enact the provisions. He concluded that Congress had not declared in what circumstances the contemplated acts should be forbidden and that the President was, in effect, left without standard or rule, to deal with the prohibitions as he pleased. The sole dissent was based upon the view that the petitioners were never in jeopardy and, therefore, had no standing in court to seek an injunction.

By the terms of the proposed bill, a national quota may not become effective unless by referendum two-thirds of the farmers producing the given commodity vote for the quota. I have pointed out that in effect there is a compulsion upon cooperators to vote favorably for a referendum on pain of losing substantial benefits under their adjustment contracts if they fail to do so.

However, I wish at this point to discuss the constitutional feature of the proposal even assuming that such a referendum would represent the free choice of the participants. The question is whether the power vested in the farmers producing a certain commodity to suspend the operation of the quota does not involve an unlawful delegation of law-making power to private citizens.

The clearest analogy may be found in the Carter case, in which the Bituminous Coal Act of 1935 was invalidated. On the feature I am about to discuss there was no dissenting voice raised. That act delegated the power to fix maximum hours of labor and minimum wages to the producers of more than two-thirds of the annual tonnage production for the preceding calendar year and more than one-half of the mine workers employed. The Court pointed out that the effect of this delegation of power was to subject the dissenting minority to the will of the majority and that the power conferred upon the majority was in effect the power to regulate the affairs of an unwilling minority. The Court said:

> * * * This is legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business. The record shows that the conditions of competition differ among the various localities. In some, coal dealers compete among themselves. In other localities they also compete with the mechanical production of electrical energy and of natural gas. Some coal producers favor the code; others oppose it; and the record clearly indicates that this diversity of view arises from their conflicting and even antagonistic interests. The difference between producing coal and regulating its production is, of course, fundamental. The former is a private activity; the latter is necessarily a governmental function, since, in the very nature of things, one person may not be entrusted with the power to regulate the business of another, and especially of a competitor. And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property. The delegation is so clearly arbitrary, and so clearly a denial of rights safeguarded by the due-process clause of the fifth amendment, that it is unnecessary to do more than refer to decisions of this Court which foreclose the question (*Schechter Corporation* v. *United States*, 295 U. S. 537).

I submit that precisely the same considerations apply in connection with the present bill. In the same way as in the case of coal, the conditions of competition differ among various localities. Farmers compete among themselves, just as they compete with substitute products. Some of the farmers will favor the quota, others oppose it, and it should be noted

particularly that the referenda to be conducted under the terms of the proposed bill are not weighted in accordance with production or acreage but that a farmer producing a commodity on 5 acres has an equal vote with a farmer producing the same commodity on 5,000 acres.

I therefore conclude that the proposed bill is unconstitutional (a) because it is not a true or proper exercise of the commerce power, (b) the bill involves a perverted use of the welfare power, and (c) the bill unlawfully delegates powers to the Secretary of Agriculture and to the farmer committees.

Mr. President, the Senator from Idaho [Mr. BORAH] in his discussion of the pending bill referred to a number of cases in which what might be denominated local-option policies or measures were cited in support of his contention that they gave support to the so-called referendum provisions of the pending bill.

I have examined the cases referred to, and I respectfully insist that they are not in point. The cases referred to relate largely to zoning ordinances, statutes providing for the creation of irrigation districts, and so forth.

State court decisions upholding the validity of local-option laws, zoning ordinances, and statutes providing for the creation of irrigation districts, which are to become effective only upon the vote of a certain percentage of residents, landowners, or other persons affected by the legislation furnish no authority in support of the referendum provisions of S. 2787. In the first place it is well settled that in distributing its governmental powers a State has considerably more freedom than the Congress has. A State may, for example, confer legislative and judicial powers upon the same governmental agency and, as Mr. Justice Holmes said in *Prentis* v. *Atlantic Coast Line* (1908) (211 U. S. 210, 225):

> We shall assume that when, as here, a State constitution sees fit to unite legislative and judicial powers in a single hand, there is nothing to hinder so far as the Constitution of the United States is concerned.

Mr. Justice Hughes expressed somewhat the same thought in *Crowell* v. *Benson* (1932) (285 U. S. 22, 57), when he said, with respect to the question as to whether "the Congress could completely oust the courts of all determinations of fact by vesting the authority to make them with finality in its own instrumentalities or in the executive department":

> In this aspect of the question the irrelevancy of State statutes and citations from State courts as to the distribution of State powers is apparent. A State may distribute its powers as it sees fit, provided only that it acts consistently with the essential demands of due process and does not transgress those restrictions of the Federal Constitution which are applicable to State authority.

In the second place, it should be borne in mind that although it is a well-settled principle of constitutional law that the power conferred upon the legislature to make laws cannot be delegated to any other body or authority, an exception has been recognized in the case of the delegation of powers by the States to local governments, including counties, cities, towns, road and school districts, and the like. Willoughby says in this connection:

> The courts have held, as to this, that the giving by the central legislative body of extensive lawmaking powers with reference to local matters to subordinate governing bodies being an Anglo-Saxon practice, antedating the adoption of the Constitution, and the right of local self-government being so fundamental to our system of politics, our constitutions are, in the absence of any express prohibitions to the contrary, to be construed as permitting it. (The Constitutional Law of the United States, 2d ed., p. 1636.)

It should also be borne in mind that the courts have made a distinction between State statutes providing for a special referendum with respect to matters of local concern, such as the local-option laws, and those providing for a general referendum with respect to proposed legislation which is to be operative, if approved by the people, throughout the State. The former have been sustained as a delegation of local governing while the latter have in many instances been held invalid as an improper delegation of legislative power. In this connection Willoughby says:

> * * * It may be said that the weight of authority would seem to be against the validity of statutory provisions for the submission to the electorate of the State of the question as to whether a measure shall or shall not become law. In answer to the point that the lawmaking power was not thus transferred, but simply the operation of the statutes in question made dependent upon the happening of a particular event, namely, the approving vote of the people, the court of New York, in *Barto* v. *Himrod*, said: "It is not denied that a valid statute may be passed to take effect upon the happening of some future event, certain or uncertain. But such a statute, when it comes from the hand of the legislature, must be a law in praesenti to take effect in futuro. * * * The event or change of circumstances on which a law may be made to take effect must be such as, in the judgment of the legislature, affects the question of the expediency of the law—an event on which the expediency of the law, in the judgment of the lawmakers, depends. On this question of expediency the legislature must exercise its own judgment definitely and finally. * * * But in the present case no such event or change of circumstances affecting the expediency of the law was expected to happen. The wisdom or expediency of the free-school law, abstractly considered, did not depend on a vote of the people. If it was unwise or inexpedient before that vote was taken, it was equally so afterward. The event on which the act was made to take effect was nothing else than the vote of the people on the identical question which the Constitution makes it the duty of the legislature itself to decide. * * * The government of the State is democratic and it is a representative democracy, and in passing general laws the people act only through their representatives in the legislature.

In a footnote Willoughby adds:

> While, as indicated, direct legislation laws of a general character have at times been held unconstitutional, special referendum or local option laws have been held valid, the point being taken, among others, that at the time the Federal and State Constitutions were adopted measures of this character were generally recognized as proper and construed to provide for delegation of local governing rather than legislative powers. Thus Cooley, summing up the argument upon this point, says: "It has already been seen that the legislature cannot delegate its power to make laws; but fundamental as this maxim is it is so qualified by the customs of our race and by other maxims which regard local government that the right of the legislature, in the absence of authorization or prohibition, to create towns and other inferior municipal organizations and to confer upon them the powers of local government, and especially of local taxation and police regulation (liquor laws, etc.) usual with such corporations, would pass unchallenged. The legislature in these cases is not regarded as delegating its authority, because the regulation of such local affairs as are commonly left to local boards and officers is not understood to belong properly to the State, and when it interferes, as sometimes it must, to restrain and control the local action there should be reasons of State policy or dangers of local abuse to warrant the interposition" (Constitutional Limitations, 7th ed., p. 264). In the earlier cases (*Wales* v. *Belcher*, 3 Pick 508; *Godden* v. *Crump*, 8 Leigh 120; *Burgess* v. *Pue*, 2 Gill 11) general referendum laws were sustained: since the decision of the Delaware court in 1847 (*Rice* v. *Foster*, 4 Harr. 479) the general practice, as indicated in the text, has been to hold them void as a delegation of legislative power (The Constitutional Law of the United States, 2d ed., pp. 1651–1652).

It is submitted that no proper analogy can be drawn between an act of Congress which requires a referendum even of a limited class of persons and a State statute which provides for a special referendum with respect to matters of local interest, for in the nature of things any act of Congress must be of general scope. On the other hand, there would seem to be a decided similarity between the provisions of a State statute requiring a general referendum to be held to determine whether the statute is to become effective and the referendum provisions of S. 2787; and, in view of the fact that State statutes of that type have been generally held to be invalid from a constitutional standpoint on the ground of an improper delegation of legislative power, it would seem to follow logically that the referendum provisions of S. 2787 would be equally defective on that ground.

Mr. President, another phase of the question under consideration is worthy of attention. It is assumed by some persons that whenever difficulties are encountered in economic or industrial fields the Government has full authority to deal with the situation through legislation or otherwise. In other words, that the Government is to be a cure-all for the disappointments and problems encountered in life; but the fact is overlooked that the Government must and does operate through individuals who are as other persons having their failings and imperfections. It may be that groups or individuals can be found who are sufficiently wise and omniscient to fix normal yields and base acreage for every farm in the country without at the same time freezing production at inefficient levels, deterring the free natural movement and expansion of farm production. It

may be that such individuals can be found who are wise enough to conquer the natural forces sufficiently to maintain the ever-normal granaries without creating an artificially high and burdensome price level for the consumer. This apparently is the assumption of the authors of the bill, for the Secretary of Agriculture would receive enormous powers not only to control production but to eliminate the rights of each man in the use of his land and property, directly and indirectly fix prices, create huge new tax burdens, and spend vast sums of money as his whim and conscience may dictate. If a man or group of men can be found who are wise enough to use such powers without creating more evil than good, a new milestone has been reached in the march of bureaucracy.

Mr. President, as indicative of what might be called the "blind faith" of the people in the omnipotence and omniscience of Congress, I invite attention to the fact that hundreds and, indeed, thousands, of laws have been enacted by Congress ostensibly to improve economic and industrial conditions, many of which have been wholly ineffective, and some of which have proven to be harmful to those who expected to be benefited, and injurious to the country as a whole. I have before me a volume of 375 closely printed pages containing statutes passed by Congress since 1920 dealing with agriculture and with various forms of relief. Many of these measures were driven through Congress by farm and other organizations under the belief that they would solve agricultural problems and bring prosperity to the farmer. The fact is that many of them, including the so-called Federal Farm Board, were costly experiments, and brought no relief to agriculture or to the country. The number of statutes enacted by the Federal Government alone exceeds 50,000, and the States and municipal bodies have filled hundreds, if not thousands, of volumes with their laws, ordinances, and regulations. It is evident that the efforts to cure all economic and industrial ills by legislation and Executive orders and proclamations have failed to accomplish the results desired. It has been said that we are cursed with too many laws and oppressed by too many law-enforcing agencies. Notwithstanding the disappointing results of legislation to solve farm problems, it is now insisted that another measure, more far-reaching and more drastic, be enacted.

The bill before us deals with only a few agricultural commodities, and we may expect demands for additional legislation dealing with other agricultural products, including vegetables and perishable fruits. Indeed, an eloquent appeal was made a few days ago by one of the Senators from Florida to broaden the bill so as to include fruits and vegetables.

It requires no imagination to foresee the insurmountable obstacles to be encountered in dealing with and controlling all products of the soil. It would require rules and regulations, laws and regimentation, hateful and oppressive, and a vast army of Federal agents, the cost of which would exceed $100,000,000 annually.

As stated, the bill before us would entail a burden upon the taxpayers of the United States amounting to perhaps a billion dollars annually. Congress will be required at the regular session to lay heavier burdens upon the people in order to raise this stupendous sum. I am glad to know that the President has indicated his opposition to any appropriation other than that provided under the Soil Erosion Act.

Mr. President, I repeat what I have heretofore stated, that this measure, with its cumbrous, uncertain, and oppressive features, will prove most disappointing to the farmers of our country. I am unwilling to confer upon the Secretary the tremendous power provided in this bill or to authorize the Boards and Agencies that will be created to aid in its enforcement. The bill is not in the interest of the farmers, but of bureaucrats, office holders, and those individuals who will be upon the Government pay rolls.

I might add in passing that the Government has not been niggardly in its appropriations in behalf of agriculture. I exhibit to the Senate a statement submitted to me at my request by the Secretary of the Reconstruction Finance Corporation, which shows large appropriations made for agriculture.

The statement comes from the statistical and economic division of the Reconstruction Finance Corporation and indicates the loans to agricultural financing institutions, and so forth, from February 2, 1932, to November 24, 1937, inclusive. The amount of loans authorized are shown to be $2,260,715,353.92, and the amount disbursed $1,337,463,467.85. In addition, the Corporation, as of November 24, 1937, had outstanding conditional agreements to make loans to agricultural institutions upon performance of specified conditions amounting to $75,000,000.

The second page of the statement shows allocations to other governmental agencies in connection with agriculture between the dates referred to. These total $613,885,778.64, from which disbursements were made totaling $515,344,933.56.

Mr. ELLENDER. Mr. President, will the Senator yield?

Mr. KING. I yield to the Senator from Louisiana.

Mr. ELLENDER. Has the Senator the figures as to the amount loaned to industry?

Mr. KING. I have not.

Mr. McGILL. Mr. President, may I make an inquiry of the Senator from Utah?

Mr. KING. Yes.

Mr. McGILL. Are the loans to which the Senator has referred loans made by the Reconstruction Finance Corporation?

Mr. KING. I stated that the figures given were sent to me by the secretary of the Reconstruction Finance Corporation.

Mr. McGILL. What was the character of the loans made by the Reconstruction Finance Corporation?

Mr. KING. I will put the statement in the RECORD. It contains the information sought by the Senator. I ask permission to have it inserted in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The matter referred to will be found at the end of Senator KING'S remarks.)

Mr. KING. Mr. President, the Acting Director of the Bureau of the Budget, Hon. D. D. Bell, upon my request, has furnished me, under date of November 26, a statement of expenditures primarily for agricultural aid for the fiscal years 1933–37. The statement shows nonrepayable expenditures, as follows:

*Expenditures primarily for agricultural aid for the fiscal years 1933–1937*

[In millions of dollars]

| | Fiscal year 1933 | Fiscal year 1934 | Fiscal year 1935 | Fiscal year 1936 | Fiscal year 1937 | Total |
|---|---|---|---|---|---|---|
| Nonrepayable: | | | | | | |
| Department of Agriculture: | | | | | | |
| Agricultural Adjustment Program | ------- | 290 | 743 | 543 | 534 | 2,110 |
| Soil Conservation Service | ------- | ------- | 10 | 25 | 33 | 68 |
| Relief in stricken agricultural areas | ------- | ------- | 81 | 3 | ------- | 84 |
| Other | 39 | 40 | 37 | 62 | 73 | 251 |
| Federal land banks, reduction in interest rates | ------- | 7 | 12 | 29 | 33 | 81 |
| Regional agricultural credit corporations, administrative expenses | ------- | 2 | 9 | 2 | [1] 4 | 9 |
| Farm Credit Administration, administrative expenses (including operations under agricultural marketing fund) | 31 | 23 | 13 | 12 | [1] 1 | 78 |
| Resettlement Administration (Farm Security Administration) | ------- | ------- | ------- | [2] 64 | [2] 139 | 203 |
| Total nonrepayable | 70 | 362 | 905 | 740 | 807 | 2,884 |

[1] Excess of credits, deduct.

[2] Includes expenditures for suburban resettlement projects of approximately $5,000,000 in 1936 and $17,000,000 in 1937.

These expenditures total $2,884,000,000. In addition there were repayable expenditures primarily for agricultural aid for the fiscal years 1933–37 amounting to $652,000,000. The statement also shows loans primarily for agricultural aid

between the years mentioned amounting to $290,000,000. The grand total of the appropriations shown in the statement of the Director of the Bureau of the Budget is $3,826,000,000.

The statement further shows that there were appropriations of $1,555,000,000 for activities of the Department of Agriculture not primarily related to agricultural aid and not included in the figures which I have submitted.

These statements indicate that appropriations were made by the Federal Government for the aid of agriculture between the dates mentioned of approximately $5,000,000,000, of which $652,000,000 are repayable.

In the light of these facts it cannot be said that the Government has been niggardly in making contributions in aid of agriculture.

Mr. COPELAND. Mr. President, will the Senator yield?

Mr. KING. I yield.

Mr. COPELAND. Unless the Senator has the figures, permit me to say that through the years 1935 to 1937, inclusive, the farmers received $2,041,795,000. At the same time the total Federal tax collections were $15,000,000,000. In other words, one-seventh of all the money collected in Federal taxes went to the farmer; and that, of course, is outside of the regular, normal operations of the Agricultural Department.

Mr. McGILL. Mr. President——

Mr. KING. I yield to the Senator from Kansas.

Mr. McGILL. In this connection, would it not be well to put into the RECORD, in order that we may have a clear picture, the amount of loans made to other industries—manufacturing concerns, banks, railroads, and all other industrial concerns?

Mr. KING. If the Senator desires to place those statistics in the RECORD, I have no objection, but not as part of my remarks, because they are not pertinent to my remarks. I have not the slightest objection to the Senator putting them in as part of his speech.

Mr. ELLENDER. Mr. President, will the Senator yield?

Mr. KING. I yield to the Senator from Louisiana.

Mr. ELLENDER. In the investigations of the Senator from Utah, did he find out how much the American people had paid to manufacturing, to industry, as a result of the tariff, say since 1934, the same period to which the Senator has referred?

Mr. KING. Mr. President, I have discussed the tariff question upon many occasions when it was before the Senate. It is not now before us and I shall not be diverted from the subject under consideration to discuss extraneous matters. Permit me to say, however, that I have been an opponent of our tariff policies. The Democratic position for many years called for a tariff for revenue only, but it has been departed from and many Democrats seem to be as devoted to protection as are Republicans. If my friend is interested in determining whether a protective tariff is desired, let him go to the textile manufacturing plants in his own State, and the various manufacturing plants in the Northern and Southern States, and propose to repeal all tariff duties, and see what kind of a reception he will obtain.

Mr. ELLENDER. Mr. President, will the Senator further yield?

Mr. KING. I yield.

Mr. ELLENDER. I am not desirous of taking off the tariff. I think the tariff is necessary in many cases; but when the Senator from Utah makes the statement that the Government spends so many billion dollars to help the farmer, I should like to know and put in the RECORD, if I may, what the American farmer and, in fact, what the American people pay to industry as a tribute—not to the Government but directly to industry.

Mr. KING. If the Senator desires as a part of his speech to show the benefits that the American people, including the farmers, have derived from the tariff, I have no objection. I may state to him, however, that for years among the strongest advocates of the protective tariff were the farmers of Iowa, Kansas, Nebraska, and other States. Agriculture was a strong supporter of the Republican Party and the protective-tariff system. I am not now arguing the tariff question and make no comment upon the wisdom or evil of protection. If my friend, who has spoken at length upon this bill, desires to speak again upon the evils or the benefits of the protective tariff, he may do so to his heart's content, and I shall not say him nay. I desire to proceed and conclude as soon as possible, and I shall not be drawn into a discussion of the tariff question to suit my friend from Louisiana.

Mr. President, it will be recalled that when the Coal Act of 1935 was pending in Congress, Congress was urged to pass the legislation despite reasonable doubts as to its constitutionality. A yardstick was thus to be supplied, and the Supreme Court was to indicate how many inches make a yard. Although a new legislative procedure was to be introduced, the chief objection of many to the passage of a law about which reasonable doubts existed consisted in the fact that the legislators had taken an oath to obey and support the Constitution. For this purpose legislators, like members of the executive department, are agents of the people. I am told that some teachers in our public schools now refuse to take an oath to support the Constitution of the United States. Perhaps there are other citizens who do not like to take the oath of allegiance to our country.

Can it be said that the sworn duty of a legislator should be more lightly regarded than the duty of the business agent handling purely commercial affairs for his principal? How would public opinion regard the conduct of a business agent who lightly disregards the scope of his authority and justifies his breach of trust by saying, "If I have committed a crime, the courts will ultimately, in due course, tell me so."

One hears discussion about mandates. It must never be forgotten that the Constitution of the United States is a mandate whose sanctity the legislator is sworn to uphold. Some so-called mandates are based upon the fancy and imagination of those who claim them, and not infrequently when no issues have been presented to the people for decision. As was so well said by that great authority upon constitutional law Thomas M. Cooley:

> • • • Legislators have their authority measured by the Constitution; they are chosen to do what it permits, and nothing more, and they take solemn oath to obey and support it. When they disregard its provisions, they usurp authority, abuse their trust, and violate the promise they have confirmed by an oath. To pass an act when they are in doubt whether it does not violate the Constitution, is to treat as of no force the most imperative obligations any person can assume. A business agent who would deal in that manner with his principal's business would be treated as untrustworthy; a witness in court who would treat his oath thus lightly, and affirm things concerning which he was in doubt, would be held a criminal. • • •" (Cooley on Principles of Constitutional Law, at p. 160).

Mr. COPELAND. Mr. President, will the Senator yield?

Mr. KING. I yield.

Mr. COPELAND. I am glad the Senator has not forgotten the teachings of his great preceptor. I exempt the authors of the bill from the statement I am about to make, but I have talked with many Senators about the bill, and even those who say they will probably vote for it without exception have stated that they have very serious doubts about its efficacy and its constitutionality. Does the Senator mean, in quoting our old friend Judge Cooley—because he was my friend, too—that Members of the Senate are actually called upon to exercise judgment, and to follow their convictions regarding the relationship of the pending bill or any other measure to the Constitution?

Mr. KING. Mr. President, I am unwilling to pass judgment upon my colleagues. Each Senator must determine for himself what course to pursue and, of course, square his conduct with his own conscience. Speaking for myself, if I believed a measure to be unconstitutional I would regard it to be my duty to vote against it. I would feel that I was doing a disservice to my country if I voted for a measure which I believed to be unconstitutional because of some advantage or some supposed exigency.

It is asserted by some persons that the courts have not given due weight to congressional findings of fact or to the

judgment of Congress that laws are constitutional. But how can the courts be expected to honor the opinion of legislators on these matters if the Executive and Congress should join in disregarding questions of constitutionality and enact laws with the inevitable effect, and one might almost say with the specific purpose, of passing along to the courts alone the task of supporting the Constitution of the United States? No pressure upon the legislature should be great enough to justify such an evasion of solemn duty.

Mr. President, owing to interruptions and compelled detours because of questions asked by Senators, I have consumed more time than had been my purpose. Being convinced that the measure before us will fail to carry out the promises made in its behalf and that it is pregnant with evils and repercussions which will follow for an indefinite period, I have felt constrained to oppose the bill. It is undemocratic, coercive, and at variance with the philosophy upon which our Government rests and the views of those who laid the foundations of this Republic. I recognize the zeal and earnestness of the junior Senator from Idaho [Mr. POPE] and the junior Senator from Kansas [Mr. MCGILL] which they have manifested in the consideration of the bill. I cannot help but regret that they have exhibited so much zeal in a cause which I regard as harmful to our country.

Before concluding, I desire to have inserted in the RECORD several paragraphs from a statement addressed to the Members of Congress under date of November 30, 1937, by Mr. Fred Brenckman, the Washington representative of the National Grange. As the Senators know, the National Grange has occupied for many years an honored position among agricultural organizations. The statement condemns the provisions relating to compulsory control, quotas, and penalties, which it declares violate all the best traditions of American democracy. The statement further declares it to be the opinion of the Grange that both the House and Senate bills should be referred back to the committee and stripped of their compulsory features. I ask to have the parts referred to inserted in the RECORD at this point as a part of my remarks.

There being no objections, the statement was ordered to be printed in the RECORD as follows:

*To the Members of Congress:*

However, we are strongly of the opinion that the new legislation should be based on the idea of voluntary cooperation on the part of the farmers, rather than compulsory control on the part of the Government. It should be clearly understood that under no circumstances does the Government have the right to use the word "must" when it comes to telling the farmers of the country how much or how little they should produce of any particular crop, or how much or how little they should place upon the market. There can be no such thing as a majority, under the guise of a referendum, dictating to a minority in matters of this kind.

The provisions relating to compulsory control, quotas, and penalties contained in Senate bill 2787 violate all the best traditions of American democracy. If this bill should be enacted, it would lay the basis for perhaps 100,000 lawsuits in the agricultural States of the country every year. So far from being a help in the solution of the farm problem, there is justification for saying that the enactment of this measure would further complicate the situation and render the plight of the farmer more desperate than ever.

It should be remembered that Congress has a responsibility regarding the constitutionality of legislation that is enacted, as well as the Supreme Court. If such a measure as the Senate bill should pass and in due time the Supreme Court, in the performance of its sworn duty, should declare it to be unconstitutional, it would simply furnish an excuse for certain elements to raise a hue and cry that would resound throughout the agricultural sections of the country to the effect that the Supreme Court is the enemy of the farmer. That would not be fair to the Supreme Court, nor would anyone be benefited by it.

In the opinion of the National Grange, both House and Senate bills should be referred back to committee and stripped of their compulsory features. In planning a long-time program for agriculture, we should not begrudge the time nor the patience that is necessary to make it sound, workable, and constitutional.

Yours sincerely,

THE NATIONAL GRANGE,
By FRED BRENCKMAN,
*Washington Representative.*

Mr. KING. Mr. President, I also ask permission to have inserted in the RECORD at this point in my remarks an editorial appearing in the Washington Post under date of December 1, 1937, entitled "Two Dangerous Farm Bills." Before permission is granted, I should like to read the concluding paragraph of the editorial:

In brief, the bills now before Congress would impose upon the country a system of agricultural control that would do credit to Nazi Germany or Communist Russia. If agriculture is forced into such a strait jacket, it will be only a matter of time until similar regimentation is extended to industry and labor. Such a system is inherently antagonistic to democratic principles and practices.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Washington Post, December 1, 1937]

TWO DANGEROUS FARM BILLS

There are many differences in detail between the House and Senate farm bills, but in respect to their general purpose and the character of the control methods proposed they are discouragingly alike. The Senate bill is conceded to be more drastic because the control measures are stricter and penalties for noncompliance more severe. But disregarding these superficial differences, both measures would set up a permanent and far-reaching system of control over agriculture by compulsory limitations of acreage and establishment of marketing quotas for four basic crops—cotton, wheat, corn, and tobacco—as well as rice.

Ostensibly the compulsory control features of the proposed legislation are subject to a referendum vote of the farmers concerned. But as Representative ANDRESEN said in course of the House debate, speaking of the cotton provisions, no grower could afford to stay out and thus lose the benefit payments and subsidies promised him under the program.

The scope, complexity, and bewildering detail of the farm bills pass description. Intelligent debate is necessarily limited to a very few experts in House and Senate. The average Member will be tempted to confine his interest to those sections of the bills that chiefly concern the people of his own State or district. That, however, is a tendency likely to have unfortunate results. It inclines legislators to judge the farm-control plan not from the national viewpoint but from that of narrowly provincial and selfishly short-sighted special-interest groups.

This attitude is obviously dangerous, for it diverts attention from the major issue involved in the farm-control program, namely, the feasibility and desirability of a regimented agriculture directed from Washington by officials exercising wide administrative discretion. Both House and Senate bills rely upon these presumably omniscient individuals to impose acreage limitations for the curtailment of basic crops, ignoring the fact that this method of control has been shown to be ineffective. Both bills would confer upon the regulatory authorities powers calling for the gift of prophecy as well as superhuman knowledge.

Under the guise of a soil-conservation plan, it is proposed to shift millions of acres of land from production of certain basic crops to other uses by rewards and threats of punishment. The cost of this system has not been appraised by those who devised it, and its effects are, of course, unforeseeable. However, insofar as the aim of raising prices of our leading export crops is achieved, it is obvious that fresh dislocations will result from loss of foreign markets.

Moreover, the belief that agricultural output can be regulated by acreage control ignores one of the chief determinants of the size of a crop—the weather. Natural forces cannot be relied upon to follow a plan worked out by the astutest minds of the Department of Agriculture. But even if the planners were 100 percent correct in their guesses as to what the sun and wind, the floods and droughts of the future would add to or subtract from their estimates, their activities would be a doubtful blessing.

The major issue is whether the farmers of the United States want to subject themselves to the decrees of a group of bureaucrats who tell them how much and what to plant, how much to sell, and how much to store. This substitution of official orders for independent initiative is not the American way of doing things and is quite likely unconstitutional. It is a system based upon the belief that a few men in authority know better than the many engaged in active nongovernmental pursuits how to direct and control the economic processes of the Nation. It assumes that the adjustments made under a relatively free system of production and exchange are inferior to political control.

In brief the bills now before Congress would impose upon the country a system of agricultural control that would do credit to Nazi Germany or Communist Russia. If agriculture is forced into such a strait jacket, it will be only a matter of time until similar regimentation is extended to industry and labor. Such a system is inherently antagonistic to democratic principles and practices.

Mr. KING. Mr. President, there appeared in the Evening Star on the 27th of November last an editorial entitled "Coercing the Farmer," which analyzes the pending bill and demonstrates its coercive and punitive provisions. I ask permission to have this editorial inserted in the RECORD at this point in my remarks.

There being no objection, the editorial was ordered to be printed in the RECORD as follows:

COERCING THE FARMER

Without undertaking to prejudge the constitutionality of the farm bill now under consideration in the Senate, it should be pointed out that the proposed measure embodies provisions that find no sanction in the Supreme Court decision of last year invalidating the old Agricultural Adjustment Act. The questionable provisions of the present bill may be eliminated from the final draft of the law, but a first reading of the measure indicates that they are inextricably woven into the basic theory of the recommended legislation.

Among other reasons, the old A. A. A. was declared unconstitutional by a 6 to 3 vote of the Court because it sought to compel all farmers to abide by crop restrictions. This was not attempted directly, but through the device of granting cash benefits to those farmers complying with the restrictions and by withholding them from those who did not. It was contended the legislation was not coercive because farmers could elect not to comply if they wished, but of this, Associate Justice Roberts, speaking for the majority, said: "The power to confer or withhold unlimited benefits is the power to coerce or destroy. * * * This is coercion by economic pressure. The asserted power of choice is illusory."

But the present measure indulges in no such niceties. Its fundamental purpose of compulsion is frankly stated. First, the act calls for a referendum of farmers who, for example, grow wheat. They will be asked to state whether they want the Government to fix quotas limiting the quantity of wheat each can raise in return for cash benefits. If two-thirds of the farmers vote in the affirmative the Secretary of Agriculture is authorized to fix the quotas and, should any farmer exceed his quota, he becomes guilty of an unfair agricultural practice. This, of course, applies as well to the one-third who voted in the negative and to those who did not vote at all. To make these potential dissenters conform, the act makes it the duty of the proper United States district attorney to sue a farmer marketing wheat in excess of his quota to recover the penalty prescribed by the act—50 percent of the parity price of any wheat so sold. In addition, farmers must furnish cards showing they have not exceeded their quotas, and should they fail to do so, they may be subjected to a fine of not more than $100 for each offense.

The Supreme Court, since rendering the A. A. A. decision, has adopted a more liberal view of the powers that may be exercised by the Federal Government. But it seems almost fantastic to hope for approval of the punitive provisions of the new act from the five Justices still on the bench who vetoed the original legislation.

Mr. KING. Mr. President, I also ask to have inserted in the RECORD at this point an article appearing in the Washington Star on the 25th of last November entitled "The Puzzling Farm Bill." The article is by Mr. Mark Sullivan.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Star, November 25, 1937]

THE PUZZLING FARM BILL—MEASURE IS HELD ALMOST BEYOND UNDERSTANDING, BUT A. A. A. HAS SUGAR-COATED PLAN

(By Mark Sullivan)

The farm-control bill has been introduced. It is before the Senate. I have a copy in my hands.

The bill contains 97 pages of about 270 words each—about 27,000 words. That is a lot of words. When the reading clerk of the Senate was rattling the bill off on Tuesday, I did not time him. Two hundred words a minute would be a fairly rapid pace. If the reading clerk was hitting it up at that rate, the reading would take upward of 2 hours. (Incidentally it was observed that after the reading clerk had been going for 20 minutes there were just 10 Senators, out of 96, on the floor, and practically all seemed to have occupations or preoccupations other than listening to the bill.)

But the reading clerk was just reading the bill, just pronouncing the words. He was not trying to understand it. At least I don't think he could have tried to understand it—if he did, I apologize. To read the bill and understand it would take more than 2 hours. I have been at it more than 2 hours, and I have hardly made a beginning.

SOME REMARKABLE PROVISIONS

I am tempted to say that no one understands the bill. But I can't say that. It is clear that the members of the Senate Committee on Agriculture, or some of them, understand it, and are to be congratulated for their hard work and patience. Here and there throughout the original draft (as written, I presume, by some New Dealer in Triple A) are passages with lines drawn through them. Those are provisions which the Senate committee would not accept.

Almost one-tenth of the 27,000 words is devoted to "Marketing quotas for wheat and corn." I have read this part carefully. But reading what this bill says is not enough to understand fully what is being attempted. For this bill is tied up with the soil-conservation laws and with other laws. But within the part of the present bill dealing with wheat and corn are some remarkable provisions.

What A. A. A. is after is control of farming, of all farms, and all farmers. They are after Government control; the same type of control that is practiced in Germany, Russia, and Italy. But they know Congress at this stage won't give them arbitrary control over the farmer. So they have rigged up a device which they call a referendum.

They will conduct a referendum of farmers who raise wheat. The question will be in effect, "Do you want the Government to dictate to each of you how much wheat you may raise for sale on your own farm, and penalize you if you raise more?"

SUGAR-COATED REFERENDUM

Only, of course, the question will not be phrased quite so candidly as that. The whole thing will be sugar coated. To get the farmer to vote "yes," he will be promised something. The bill provides that if the farmer will accept a quota the Government will make cash payments to him and loan money to him. But no quotas, no cash. (Triple A has other ways of persuading farmers to vote "yes" and accept quotas which there is not space to describe here.)

Very well. Two-thirds of the farmers vote "yes." Thereupon—I quote the pending bill:

"The Secretary shall * * * fix the quantity of the commodity (wheat) which may be marketed from the farm."

Now they've got the farmer hooked. Every farmer—not merely the ones who voted "yes," but all of them. They have all got to accept quotas, no matter how they voted or whether they voted at all.

So what happens? The Secretary puts a quota on me; tells me how much wheat I am allowed to raise. Not the Secretary in person, you understand—it's done through someone having authority from him. I wish it were the Secretary in person. I wish Mr. Wallace would come around to my farm in Pennsylvania. I know him well and get along with him fine. If he will come around and deliver my quota card in person, I'll give him a good farm dinner. And wouldn't that be a surprise to his stomach?

UN-AMERICAN TACTICS

All right. Mr. Wallace comes around to my farm and notifies me I can raise so much wheat and no more.

This strikes me as un-American. I say: "Go chase yourself. I'll raise as much wheat as I feel like—you can't dictate to me!"

"I can't, hey? replies Mr. Wallace. "You just wait—Ill see you later in Federal court." And Mr. Wallace walks down the lane looking the way a man of natural kindliness looks when he tries to be a dictator and doesn't really like the role.

Where do I get that about "Federal courts"? It's right there in the bill. It rests on two provisions. The first says:

"It shall be an unfair agricultural practice for any farmer * * * to market wheat * * * in excess of his farm-marketing quota * * *."

And for this "unfair agricultural practice" I can be haled into court. Read the provision, section 22 (c) of the bill:

"Whenever * * * the Secretary has reason to believe that any farmer has engaged in any unfair agricultural practice * * * and so certifies to the appropriate district attorney of the United States, it shall be the duty of the district attorney * * * to institute a civil action in the name of the United States for the recovery of the penalty payable with respect to the violation."

WAY TO LAND IN COURT

And there is still another way by which you can find yourself in court, criminal court. That is section 22 (e):

"Farmers engaged in the production of wheat * * * shall furnish such proof of their acreage, yield, storage, and marketing * * * in the form of records, marketing cards, reports * * * or otherwise as may be * * * prescribed by regulations of the Secretary. Any farmer failing to furnish such proofs * * * shall be guilty of a misdemeanor and, upon conviction thereof, be subject to a fine of not more than $100."

That is part of what the wheat portion of the crop-control bill provides. The provisions about other crops are similar. I think I have stated it accurately. If I have made any error, I hope Mr. Wallace or his alert publicity men will correct me. The country needs to know just what is in this bill and just what it means. We want to know now, before the bill is passed.

Mr. KING. The Senator from Kansas [Mr. MCGILL], during my remarks, inquired as to the character of the loans made by the Reconstruction Finance Corporation. I stated that I had a communication from the Secretary showing the loans to agricultural financing institutions, and so forth, and then obtained permission to insert the statement in the RECORD. It is as follows:

RECONSTRUCTION FINANCE CORPORATION,
*Washington, November 29, 1937.*

Hon. WILLIAM H. KING,
*United States Senate, Washington, D. C.*

DEAR SENATOR KING: In response to your telephone request, I inclose two statements, one regarding loans to agricultural financing institutions, etc,, and the other regarding allocations to other governmental agencies in connection with agriculture, both statements covering the period from February 2, 1932, when the Corporation was organized, to November 24, 1937, inclusive.

Sincerely yours,

G. R. COOKSEY, *Secretary.*

*Loans to agricultural financing institutions, etc. (from Feb. 2, 1932, to Nov. 24, 1937, inclusive)*

| Class | Number of loans | Number of borrowers | Amount authorized | Amount withdrawn or canceled | Amount disbursed | Amount repaid [1] | Outstanding as of Nov. 24, 1937 |
|---|---|---|---|---|---|---|---|
| Loans to Federal land banks | 57 | 12 | [2] $399,636,000.00 | $12,400,000.00 | [2] $387,236,000.00 | [2] $374,850,541.94 | $12,385,458.06 |
| Loans to Federal intermediate credit banks | 8 | 8 | 9,250,000.00 | | 9,250,000.00 | 9,250,000.00 | |
| Loans to regional agricultural credit corporations | 1,343 | 12 | 178,840,452.48 | 5,596,811.76 | 173,243,640.72 | 173,243,640.72 | |
| Loans to Commodity Credit Corporation | 22 | 1 | 1,465,412,664.99 | 565,274,981.09 | 688,129,910.40 | 661,737,228.83 | 26,392,681.57 |
| Loans to Secretary of Agriculture to acquire cotton | 2 | 1 | 23,500,000.00 | 20,200,000.00 | 3,300,000.00 | 3,300,000.00 | |
| Loans to joint-stock land banks | 57 | 26 | 24,221,572.68 | 5,742,803.06 | 17,979,621.38 | 15,904,845.33 | 2,074,776.05 |
| Loans to agricultural credit corporations | 250 | 20 | 6,120,867.59 | 477,249.37 | 5,643,618.22 | 5,544,991.44 | 98,626.78 |
| Loans to livestock credit corporations | 154 | 19 | 14,511,327.88 | 1,539,729.19 | 12,971,598.69 | 12,884,874.69 | 86,724.00 |
| Loans for financing exports of agricultural surpluses | 6 | 3 | 53,370,955.22 | 33,146,368.56 | 20,224,586.66 | 20,177,690.67 | 46,895.99 |
| Loans for financing agricultural commodities and livestock | 157 | 104 | 85,851,513.08 | 66,332,021.30 | 19,484,491.78 | 18,503,022.30 | 981,469.48 |
| Total, agricultural financing institutions, etc | 2,056 | 206 | [3]2,260,715,353.92 | 710,709,964.33 | 1,337,463,467.85 | 1,295,396,835.92 | 42,066,631.93 |

[1] Excludes repayments unallocated, pending advices, as of Nov. 24, 1937.

[2] Includes $193,618,000 representing refinancing of loans previously made by the Corporation to Federal land banks for different individual amounts, but in the same aggregate amount.

[3] In addition, the Corporation as of Nov. 24, 1937, had outstanding conditional agreements to make loans to agricultural institutions, upon the performance of specified conditions, as follows: To a joint-stock land bank, $2,000,000; and to Commodity Credit Corporation, $75,000,000.

*Allocations to other governmental agencies in connection with agriculture (from Feb. 2, 1932, to Nov. 24, 1937, inclusive)*

| | Amount allocated | Amount disbursed |
|---|---|---|
| Allocations: | | |
| Secretary of Agriculture for crop loans | $115,000,000.00 | $115,000,000.00 |
| Capital of regional agricultural credit corporations (reallocated from amount originally allocated to Secretary of Agriculture, includes $37,000,000 held in revolving fund) | 44,500,000.00 | 44,500,000.00 |
| Governor of Farm Credit Administration (reallocated from amount originally allocated to Secretary of Agriculture) | 40,500,000.00 | 40,500,000.00 |
| Total originally allocated to Secretary of Agriculture for crop loans | 200,000,000.00 | 200,000,000.00 |
| Regional agricultural credit corporations for expenses prior to May 27, 1933 | 3,108,278.64 | 3,108,278.64 |
| Regional agricultural credit corporations for expenses since May 26, 1933 | 13,777,500.00 | 12,636,652.92 |
| Land bank commissioner to make loans to joint-stock land banks | [1]100,000,000.00 | 2,600,000.00 |
| Land bank commissioner to make loans to farmers ($200,000,000 original allocation reduced by reallocation to Federal Farm Mortgage Corporation) | 145,000,000.00 | 145,000,000.00 |
| Federal Farm Mortgage Corporation to make loans to farmers (reallocated from $200,000,000 originally allocated to land bank commissioner) | 55,000,000.00 | 55,000,000.00 |
| Commodity Credit Corporation, purchase of stock | 97,000,000.00 | 97,000,000.00 |
| Total | 613,885,778.64 | 515,344,931.56 |

[1] Of this amount, $2,600,000 was disbursed and the remaining $97,400,000 was canceled.

Mr. ELLENDER. Mr. President, while the Senator from Utah [Mr. KING] was speaking, he suggested that I place in the RECORD, in my own time, such facts and figures as I might have with reference to the cost to the American people of the protective tariff.

Since discussing the matter a while ago I have obtained from the Department of Agriculture certain data showing that during the 4 year 1933–36 the value of goods manufactured in this country was around $40,000,000,000 annually. Assuming that only one-half of these goods were protected by tariffs, and that the effective rate was only one-fourth the value of the goods, the total cost of the tariff to the American people would be $5,000,000,000 annually. During the 4-year period this would amount to $20,000,000,000.

Mr. BARKLEY. Mr. President, I desire to have a quorum present in order that I may submit a unanimous-consent request. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

| | | | |
|---|---|---|---|
| Adams | Byrnes | Gerry | King |
| Ashurst | Capper | Gibson | La Follette |
| Bailey | Caraway | Gillette | Lee |
| Bankhead | Chavez | Glass | Logan |
| Barkley | Clark | Graves | Lonergan |
| Bilbo | Copeland | Green | McAdoo |
| Borah | Davis | Harrison | McCarran |
| Brown, Mich. | Donahey | Hatch | McGill |
| Brown, N. H. | Duffy | Hayden | McKellar |
| Bulkley | Ellender | Hitchcock | McNary |
| Bulow | Frazier | Johnson, Calif. | Miller |
| Burke | George | Johnson, Colo. | Minton |
| Murray | Overton | Schwartz | Truman |
| Norris | Pittman | Schwellenbach | Van Nuys |
| Nye | Pope | Sheppard | Walsh |
| O'Mahoney | Russell | Thomas, Utah | |

The PRESIDING OFFICER. Sixty-three Senators having answered to their names, a quorum is present.

Mr. BAILEY. Mr. President, I send to the desk certain amendments to the pending bill, and ask that they be printed and lie on the table.

There being no objection, the amendments were ordered to be printed and lie on the table.

Mr. McGILL. Mr. President, I send to the desk an amendment which I ask to have printed and lie on the table.

There being no objection, the amendment was ordered to be printed and lie on the table.

Mr. BARKLEY. Mr. President, the debate on the farm bill has proceeded now for some 2 weeks. It has been a very careful, intelligent discussion of the bill, and has been of a generally high order. However, I think the time has arrived when we ought to seek to enter into some understanding about limitation of debate. I have conferred with the Senator from Oregon, the minority leader [Mr. MCNARY], and the proposal which I shall make is acceptable to him.

Therefore, I ask unanimous consent that during the further consideration of the bill, beginning on Monday when the Senate reconvenes, no Senator shall speak more than once nor longer than 30 minutes on the bill, nor more than once nor longer than 15 minutes on any amendment thereto.

Mr. MCNARY. Mr. President, of course that means "any amendment pending or that may be offered thereto."

Mr. BARKLEY. Oh, yes.

The PRESIDING OFFICER. Any amendment, whether it is pending or not.

Mr. MCNARY. I wish to have coupled with that the further provision that we shall meet during that time at 12 o'clock noon rather than 11 o'clock.

Mr. BARKLEY. Mr. President, it is not necessary to make that a part of the unanimous-consent agreement. I shall agree to that, and propose no change in that program without consulting the Senator and finding whether or not it is agreeable.

Mr. MCNARY. Mr. President, I have conferred with Senators on the Republican side, and have found the proposal generally acceptable. The Senator from North Dakota [Mr. FRAZIER] wishes to make a speech which will probably take him longer than the time allowed by the proposed unanimous-consent agreement. I wish to suggest to him and to the able Senator from Kentucky that the proposal might be made applicable at 3 o'clock on Monday. The Senator from North Dakota could obtain the floor at 12 o'clock on Monday and begin his address at that time.

I should like to have a word from the Senator from North Dakota.

Mr. FRAZIER. Mr. President, will the Senator from Kentucky yield to me?

Mr. BARKLEY. I yield.

Mr. FRAZIER. I expect to speak on Monday if I can obtain the floor, or at some time during the first part of the

week, and shall probably take longer than an hour. Up to the present time those who are in full agreement, or practically so, with the administration bill are the ones who have occupied the bulk of the time in this debate. It seems rather early for a limitation to be placed on debate. The committee amendments have not been disposed of. Some amendments in the nature of substitutes have been proposed, one by the junior Senator from Oklahoma [Mr. LEE] which contains many good features. It seems to me that a limitation of 15 minutes on that amendment would be unfair would not give sufficient time properly to explain it and debate it.

Mr. BARKLEY. Mr. President, the Senator will recall that the proponent of the amendment in the nature of a substitute argued it at length, occuping practically 1 full day in the discussion of the subject. I think everyone understands what his amendment in the nature of a substitute is. I do not know the necessity for discussing it at great length.

Mr. LEE. Mr. President, the amendment I am proposing is in the form of a substitute, and practically constitutes another bill. Other Senators have not devoted any time to discussing the amendment, because it has not as yet been offered and really placed before the Senate. It could not be. Therefore, I feel that the limitation suggested would be too great a limitation to be placed on discussion of my amendment.

Mr. McNARY. Mr. President, of course, under the parliamentary situation, the amendment in the nature of a substitute could only be offered after the pending bill is perfected. I suggest to the Senator from Kentucky that he might well incorporate in the unanimous-consent agreement a limitation of 30 minutes on the bill and 30 minutes on the substitute. That would take care of the Senator from Oklahoma.

Mr. LEE. Mr. President, I shall agree to a limitation of an hour on the substitute, but not less than that.

Mr. BARKLEY. Of course the Senator realizes that under the agreement I propose, if it should be entered into, any Senator would have 45 minutes' time. He would have 30 minutes on the bill and 15 minutes on any amendment thereto; and if he wanted to use his entire time to make an address, he would have 45 minutes. I have no desire to shut off debate on the substitute. I especially do not want to cut off the Senator from Oklahoma [Mr. LEE] or the Senator from North Dakota [Mr. FRAZIER], or any other Senator. If the unanimous-consent agreement shall be entered into, I am willing to have it take effect at some convenient hour on Monday. Would the Senator from North Dakota be willing that it be effective at 2 o'clock? If the Senator from North Dakota secures the floor on Monday, I am willing that he shall have the floor until 2 o'clock.

The PRESIDING OFFICER. The Chair will ask whether that suggestion is acceptable to the Senator from North Dakota.

Mr. FRAZIER. Mr. President, it can never be determined beforehand how long a speech is going to take, because the Senator having the floor never knows how many questions are going to be asked. With respect to speeches made on the pending bill, so far a great many questions have been asked. Questions asked during addresses have consumed considerable time.

Mr. BARKLEY. Mr. President, I will say to the Senator that the proposed arrangement will give the Senator 2½ hours if he wants to use that time—2 hours before the rule goes into effect, and then 30 minutes on the bill. He could occupy the floor for that time continuously if he wished to do so. Then he would have 15 minutes on any amendment. It seems to me that would be ample time. I hope the Senator from North Dakota can get along with that amount of time.

Mr. FRAZIER. I think the suggestion of the Senator from Oklahoma [Mr. LEE] that more time should be given for discussion of a substitute, such as his substitute, is a good one. Other substitutes may be offered. I do not know. Fifteen minutes is hardly long enough for the discussion of a substitute.

Mr. LEE. Mr. President, could we agree to have an hour for discussion of the bill, and 30 minutes for discussion of amendments? That would be, at most, an hour and a half limitation.

Mr. BARKLEY. Mr. President, I will say to the Senator that in order to accommodate those who want to discuss the Senator's substitute, that would, it seems to me, provide more time than ought now to be taken on the bill and on each amendment by each speaker. I am willing to exempt the 30-minute and 15-minute provision the substitute that will be offered by the Senator from Oklahoma, and a little later on, when amendments are out of the way and he proposes to offer his substitute, to confer with him with respect to some suitable limitation on the discussion of his substitute, if that is satisfactory. That will leave it open for further consideration later.

Mr. LEE. As applied to the substitute?

Mr. BARKLEY. Yes.

Mr. LEE. Very well.

Mr. BARKLEY. I will state my request in this form:

I ask unanimous consent that the Senator from North Dakota [Mr. FRAZIER] may be recognized on Monday when the Senate convenes; that at the conclusion of his speech and during the further consideration of this bill no Senator shall speak more than once nor longer than 30 minutes on the bill or more than once nor longer than 15 minutes on any amendment, and that this agreement shall not apply to the substitute to be offered by the Senator from Oklahoma [Mr. LEE].

The PRESIDING OFFICER. Is there objection?

Mr. LEE. Should not the words "amendments thereto" be inserted at the end of the proposed agreement?

Mr. BARKLEY. We can work that out.

Mr. LEE. Could we not exempt the amendments to the substitute as well as the substitute itself, and then the Senator and I have a conference regarding that?

Mr. BARKLEY. I will exempt the substitute, and, of course, if the substitute is exempted it exempts any amendments that may be offered to it. I think the Senator and I can work out an agreement about that.

Mr. LEE. Very well.

Mr. McADOO. Mr. President, may I ask if the proposal of the Senator from Kentucky contemplates that further amendments or further substitutes may not be presented during the course of the debate?

Mr. BARKLEY. No; it does not.

The PRESIDING OFFICER. The Chair understands the proposed agreement would apply to any amendments pending or any that may be offered. Is there objection to the request of the Senator from Kentucky?

Mr. McNARY. Mr. President, I think I have no objection, but, just for the sake of accuracy and a perfect understanding of the proposed agreement, may I ask that it be reported by the clerk?

The PRESIDING OFFICER. The Official Reporter will read the proposed agreement suggested by the Senator from Kentucky.

The Official Reporter read as follows:

Mr. BARKLEY. I will state my request in this form: I ask unanimous consent that the Senator from North Dakota [Mr. FRAZIER] may be recognized on Monday when the Senate convenes; that at the conclusion of his speech and during the further consideration of this bill no Senator shall speak more than once nor longer than 30 minutes on the bill or more than once nor longer than 15 minutes on any amendment, and that this agreement shall not apply to the substitute to be offered by the Senator from Oklahoma [Mr. LEE].

Mr. LEE. I should like to have the agreement amended by adding the words "or amendments thereto."

Mr. McNARY. The usual form, of course, is to have the agreement apply to any pending amendment or any amendment that may be offered.

The PRESIDING OFFICER. The Chair so stated.

Mr. McNARY. I want that incorporated in the agreement.

Mr. BARKLEY. It is perfectly satisfactory to incorporate it in the agreement, but it is not necessary, because any Senator has a right to offer an amendment at any time until the final conclusion of the bill; and the agreement would apply to all amendments that may be offered as well as to any that have been offered previously. However, it is all right to put it in the agreement, so that no one can misunderstand it.

The PRESIDING OFFICER. The Chair understands it is proposed to have the agreement include any amendment that may be on the table or any amendment that may be proposed.

Mr. BARKLEY. Yes; any amendment that may be on the table or any amendment that may be proposed until the final disposition of the bill. That is always understood.

Mr. BULKLEY. Mr. President, I should like to inquire whether the proposed agreement would preclude discussion of a motion to recommit, if one should be made.

The PRESIDING OFFICER. The agreement would not apply to such a motion at all.

Mr. McNARY. There is no limitation on such a motion proposed by the agreement.

Mr. President, just one further inquiry. There may be other substitutes proposed. My attention has been called to that situation by a number of Senators. Does the agreement as now framed include just one substitute or does it include any that may be offered? I am propounding the inquiry, Is the agreement limited to the one substitute that has been suggested by the Senator from Oklahoma or does it include other substitutes that may be offered?

The PRESIDING OFFICER. The Chair understands that the agreement would be limited to the one exception.

Mr. BARKLEY. Mr. President, as I proposed it, the exemption in the agreement was limited to the substitute to be offered by the Senator from Oklahoma [Mr. LEE], and it was so stated. I did not anticipate that any additional substitute was to be offered. The substitute of the Senator from Oklahoma is the one which has been under discussion. Of course, if we leave the language open to all manner of substitutes, we will not get very much of an agreement to limit debate.

Mr. McNARY. Oh, yes, Mr. President. I am advised there may be other substitutes offered; perhaps two; and Senators who may propose them should have a reasonable opportunity for their presentation. They may or may not be offered, but no one wants to agree to a proposal that will deny them the opportunity of presenting their views.

Mr. BARKLEY. I will, for the time being, modify my request so as to exempt all substitutes that may be offered. We may be able to agree as to any proposed substitutes later on.

The PRESIDING OFFICER. That is what the Chair thought the Senator from Kentucky intended.

Mr. BARKLEY. No; I did not have that in mind.

Mr. LEE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. LEE. Would that include the amendments to all substitutes?

Mr. BARKLEY. I think the exemption of the substitutes automatically exempts the amendments to them, because the proposal is to limit the debate on amendments to the bill, and amendments to any substitute cannot be considered as amendments to the bill. I think we can enter into a satisfactory agreement about that later.

The PRESIDING OFFICER. Is there objection to the unanimous-consent agreement, as modified, proposed by the Senator from Kentucky? The Chair hears none, and the agreement is entered into.

The agreement was reduced to writing, as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, by unanimous consent, that the Senator from North Dakota [Mr. FRAZIER] be recognized on Monday (December 6, 1937), when the Senate convenes; that at the conclusion of his speech, and during the further consideration of the bill, no Senator shall speak more than once nor longer than 30 minutes on the bill S. 2787, or more than once nor longer than 15 minutes on any amendment that may be pending or that may be proposed, and that this agreement shall not apply to any substitute that may be proposed for the bill (December 4, 1937).

EXECUTIVE SESSION

Mr. BARKLEY. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

REPORTS OF COMMITTEE ON POST OFFICES AND POST ROADS

Mr. McKELLAR, from the Committee on Post Offices and Post Roads, reported favorably the nominations of sundry postmasters, which were ordered to be placed on the Executive Calendar.

REGULATION OF PRODUCTION AND MARKETING OF SUGAR—TREATY

The PRESIDING OFFICER (Mr. ELLENDER in the chair). If there be no further reports of committees, the clerk will state the first business in order on the calendar.

The CHIEF CLERK. Executive T, Seventy-fifth Congress, first session, an international agreement regarding the regulation of production and marketing of sugar and an annexed protocol concerning transitional measures, signed at London on May 6, 1937.

Mr. THOMAS of Utah. Mr. President, as I announced yesterday, I wish to have considered Executive T, which is an international sugar agreement. The purpose of the agreement is to establish and maintain a proper relationship between supply and demand for sugar in the world market as recommended by the World Monetary and Economic Conference in 1933 on the principle that such regulation should be equitable both to the producers and the consumers.

Mr. President, when this treaty was referred by the President of the United States to the Senate for its consideration and ratification, there were just three minor objections to the treaty. Those three objections have now been met.

Mr. O'MAHONEY. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Wyoming?

Mr. THOMAS of Utah. I yield.

Mr. O'MAHONEY. Does the Senator desire to have action upon the treaty this afternoon?

Mr. THOMAS of Utah. Yes; I think there will be no objection to it. After the Senator has heard a statement relative to the three minor objections that were made to the treaty, I think he will find that no Member of the Senate is opposed to its ratification. It will probably take only 10 minutes to consider it.

Mr. O'MAHONEY. Mr. President, I may say to the Senator that while I understand the committee has offered a reservation which is generally satisfactory there has been some discussion among Members who are interested in the production of sugar in the United States with respect to an additional reservation. Personally, I have not had an opportunity to go into that, and I have had no opportunity to discuss it with the Senator from Utah; and although I am advised by the Senator from Kentucky that the Senator from Utah gave notice yesterday that he was going to call this treaty up today, unfortunately, I was not present. So I should like to request that the treaty be allowed to go over until the next meeting of the Senate.

Mr. THOMAS of Utah. Of course, I have no objection to submitting to that request. I am wondering, though, if the additional reservation could not be disposed of today. I imagine it has to do with the last sentence of paragraph (a), article 9, on page 6 of the treaty, beginning with the word "If."

Mr. O'MAHONEY. The reservation I have in mind would have to do with the last sentence of paragraph (a) of article 9 on page 6.

Mr. THOMAS of Utah. That is the one, and I was going to refer to that. It is the only objection that has been brought up. If the Senator wishes to prepare a reservation, or if, after the statement I shall make, he thinks a reservation is necessary, it would be perfectly in order to present it this afternoon.

Mr. O'MAHONEY. Perhaps it would be well for me to await the statement of the Senator.

Mr. JOHNSON of California. Mr. President, may I inquire if there is any particular reason why this treaty should be considered on Saturday afternoon?

Mr. THOMAS of Utah. I had no intention of having it considered on Saturday afternoon; but the treaty was put on the calendar last summer and an announcement was made by me, as chairman of the subcommittee which considered this treaty, that one of the objections to the consideration of the treaty at that time was that it should await the enactment of a sugar bill, because the theory of the treaty is based upon quotas, and the Jones-Costigan Act was based upon quotas, and until there was a renewal of the Jones-Costigan Act, or until some measure was passed to take its place, that we should not act upon the treaty. A sugar bill was enacted late in the last session, but no action has as yet been taken in regard to the treaty. The Senate has now been in session for 3 weeks and we have been waiting for a chance to have the treaty considered.

The reason we should speedily act upon this treaty is that there are provisions for setting up a council which is to direct the international free-sugar market, and the treaty should be acted upon by the end of the present month.

Mr. JOHNSON of California. I think the Senator has stated a very good reason for the haste in reference to the treaty, but I ask for myself, although I do not want to ask it as a personal matter at all, that the treaty go over until early next week. Having now rested this long on the Executive Calendar of the Senate without action, 2 or 3 days more will probably make no difference. By that time we may all be familiar with it and able to pass upon it with the clarity the Senator from Utah desires.

Mr. THOMAS of Utah. I could not object to that suggestion. I should like to have the Senator from California suggest a time next week when the treaty may be considered.

Mr. JOHNSON of California. I suggest Tuesday or Wednesday.

Mr. THOMAS of Utah. Would the Senator name either one of the two days?

Mr. JOHNSON of California. Of course we have the farm bill pending. I am not in charge of that on the floor of the Senate. It may be that consideration of the farm bill will occupy our time and attention for several days and until very late in the afternoon. If the Senator can arrange to take up the treaty on Tuesday or Wednesday I shall be perfectly agreeable.

Mr. THOMAS of Utah. I shall be ready Tuesday or Wednesday.

Mr. O'MAHONEY. Mr. President, if the Senator will permit an interruption, the question which is in my mind has to do with the disposition of any deficiency in the quota from the Philippine Islands. The treaty provides that if the quota of the Philippine Islands is reduced below 800,000 tons of raw sugar and 50,000 tons of refined sugar, all of that deficiency, whatever it may be, shall go to foreign countries. Obviously, under the language of the treaty, if the quota from the Philippine Islands were eliminated entirely, the entire amount would have to be distributed to foreign countries.

When the sugar bill was under consideration Senators from the State of Florida and the State of Louisiana on the floor of the Senate urged an expansion of the quotas allowed in the sugar bill to those two States. The beet-producing areas of the United States also feel that they should be permitted to expand their production.

I feel that a provision of the treaty which definitely requires that the United States shall surrender its entire quota to foreign countries is deserving of further consideration. Therefore, I should like to have the time between now and Tuesday or Wednesday to go into the matter, and I think other Members of the Senate should also have that opportunity.

The Senator from New York [Mr. COPELAND] has just suggested sotto voce that Puerto Rico might be interested in having a portion of the quota that may be diverted from the Philippine Islands. The same thing might be said of Hawaii.

Mr. JOHNSON of California. The Senator presents rather an important question about which I know nothing. I do not want to delay the Senator from Utah in his desire to take up the treaty. I suggest Tuesday or Wednesday, if that will give ample time to the Senator from Wyoming.

Mr. O'MAHONEY. I think it will. I should be perfectly agreeable to taking up the treaty Wednesday, let us say.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. THOMAS of Utah. Certainly.

Mr. BARKLEY. It occurs to me, in view of the fact that the Senate may probably want to conclude consideration of the farm bill as early next week as possible, and to do that we may possibly hold our sessions late in the afternoon, that it is unwise to agree now on what day an executive session should be held to consider the treaty unless there is some emergency that would require that it be disposed of before the farm bill is disposed of. For that reason we had better not attempt at this time to fix a definite day next week on which an executive session shall be held which may involve a long discussion that might make it necessary to adjourn the legislative session to go into executive session earlier than we otherwise would.

Mr. JOHNSON of California. We might arrange for its consideration at the next executive session that is held.

Mr. THOMAS of Utah. That would probably be Monday.

Mr. BARKLEY. That will depend on the condition of the Executive Calendar.

Mr. THOMAS of Utah. I am entirely in sympathy with the Senator from Wyoming and the Senator from California. The matter has been before us as a committee, and if we can write a suitable reservation I should be in favor of such a reservation.

Mr. BARKLEY. The treaty has been here a long time and ought to be disposed of promptly. At the same time I do not want to enter into an agreement that might interfere materially with the legislative program, as might happen if we should now agree to hold an executive session for any definite day next week. I think the matter can be worked out so that we can have an executive session probably by the middle of the week, but I would rather leave it that way than right now to fix a definite day, if that is satisfactory to the Senator from Utah.

Mr. THOMAS of Utah. It is perfectly satisfactory to me if we leave it in this way, that we shall consider the treaty at an executive session, not before next Tuesday upon getting a signal from our leader, the Senator from Kentucky (Mr. BARKLEY).

Mr. JOHNSON of California. That is agreeable.

Mr. BARKLEY. That is satisfactory to me.

The PRESIDING OFFICER. The treaty will be passed over with that understanding. The clerk will state the next business in order on the Calendar.

PROTECTION OF LITERARY AND ARTISTIC WORKS

The CHIEF CLERK. Executive E (73d Cong., 2d sess.), a convention for the protection of literary and artistic works, as revised and signed at Rome June 2, 1928.

Mr. McNARY. Mr. President, I desire that the treaty go over.

Mr. DUFFY. Mr. President, will the Senator from Oregon yield?

Mr. McNARY. I am always glad to yield to the Senator from Wisconsin.

Mr. DUFFY. This treaty was on the Executive Calendar for the greater portion of the last session. It was ratified by the Senate and that action was rescinded and the treaty was placed again on the calendar at my request. I have agreed with certain persons interested, who desire to propose or suggest a possible reservation, that the treaty shall not be taken up before the 15th of this month. With that understanding there is no possibility of it coming up prior to that time, and I shall not ask for its consideration prior to that time.

Mr. McNARY. Very well.

The PRESIDING OFFICER. The treaty will be passed over. The clerk will state in order the nominations on the calendar.

POSTMASTERS

The Chief Clerk proceeded to read sundry nominations of postmasters heretofore on the calendar, reconsidered and restored to the calendar December 1, 1937.

Mr. BARKLEY. Mr. President, I ask that those nominations, being nominations of postmasters in West Virginia, go over for the present.

The PRESIDING OFFICER. The nominations will be passed over.

The Chief Clerk proceeded to read sundry other nominations of postmasters.

Mr. BARKLEY. Mr. President, I ask unanimous consent that nominations of postmasters on the calendar, other than those in West Virginia, be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations referred to are confirmed en bloc.

That completes the Executive Calendar.

EXTENSION OF CIVIL SERVICE TO POSTMASTERS

The Senate resumed legislative session.

Mr. O'MAHONEY. Mr. President, a few days ago there was reported to the Senate from the Committee on Post Offices and Post Roads a very important bill dealing with the extension of the Civil Service System to the appointment of postmasters. A report has been filed by the majority of the committee, and the views of a minority of three and the views of a minority of one were likewise filed. The divergent views present a rather clear-cut issue as to whether or not the old patronage system shall be restored to the appointment of postmasters or whether the efforts which have been going forward for almost a generation to put the appointment of postmasters upon a strictly merit basis shall be successful. There is a great deal of public interest in the matter and for that reason I ask unanimous consent that the report of the majority of the committee and the respective minority views be printed at length in the RECORD.

There being no objection, the report (1296) and the respective minority views referred to were ordered to be printed in the RECORD, as follows:

[Senate Report No. 1296, 75th Cong., 2d Sess.]

AMENDING THE LAW RELATING TO APPOINTMENT OF POSTMASTERS

Mr. MCKELLAR, from the Committee on Post Offices and Post Roads, submitted the following report to accompany S. 3022:

The Post Offices and Post Roads Committee of the Senate, to whom was referred the bill (S. 3022) to amend the law relating to appointment of postmasters, having considered the same, beg leave to report said bill back to the Senate with the recommendation that it be amended as hereinafter set out, and, upon being so amended, the committee recommend that said bill do pass.

The amendments recommended by your committee are as follows:

On page 1, line 6, strike out the word "June" and insert in lieu thereof the word "July".

On page 1, line 11, after the word "filled", insert the following words and punctuation "as hereinafter provided,".

On page 2, line 2, after the word "law", strike out the colon and insert a period.

Also on page 2, line 2, strike out the words "*Provided*, That".

On page 2, line 3, in the word "whenever" change the letter "w" to a capital "W".

On page 2, line 6, strike out the words "the Postmaster General may recommend to".

On page 2, line 7, after the words "the President" insert the following words "may reappoint, by and with the advice and consent of the Senate,".

Also on page 2, line 7, after the words "the President", strike out the words "the appointment of".

Also, on page 2, line 7, strike out the words "if there be".

On page 2, line 8, strike out the words "one, or the appointment by promotion of" and insert the words "or, with the advice and consent of the Senate, he may appoint".

On page 2, line 9, strike out the words "in the Postal Service in the vacancy office," and insert in lieu thereof the words "serving in the post office in which the vacancy occurs, to fill the vacancy, or the President, directly or through the".

On page 2, line 10, strike out the words "or the."

On page 2, line 11, after the word "Commission" strike out the word "forthwith".

On page 2, lines 14 and 15, after the word "to" strike out the words "the Postmaster General, who shall thereupon submit the name of one of the three highest eligibles to".

On page 2, line 16, strike out the words "for appointment" and insert in lieu thereof the words "who shall appoint,".

On page 2, line 17, after the word "Senate," insert the following words "one of the three highest eligibles".

Also on page 2, line 17, after the word "vacancy" insert a period and strike out the words "unless it is established to the".

On page 2, line 18, strike out all of lines 18, 19, 20, 21, 22, and 23.

Insert a new section to said bill, as follows:

"SEC. 2. Postmasters of the fourth-class shall be held and considered 'inferior officers' under the Federal Constitution and shall be appointed by the Postmaster General. Whenever a vacancy occurs in any office of postmaster of the fourth class for which the annual compensation is $500 or more (except offices in Alaska, Canal Zone, Guam, Hawaii, Philippines, Puerto Rico, and Samoa) the Postmaster General shall request the Civil Service Commission to hold an open competitive examination to test the fitness of applicants to fill such vacancy and the Civil Service Commission shall certify the results thereof to the Postmaster General, who shall appoint one of the three highest eligibles to fill the vacancy. No person appointed to a vacancy in the office of postmaster of the fourth class as the result of an open competitive examination shall be removable except for cause as provided in the civil-service laws. The Postmaster General shall notify the General Accounting Office of all occurrences of vacancies in, and appointments to, all offices of postmasters."

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(The bill as reported is as follows:)

[S. 3022, 75th Cong., 2d Sess.]

[Report No. 1296]

[Omit the part in black brackets and insert the part printed in italic]

A bill to amend the law relating to appointment of postmasters

*"Be it enacted, etc.,* That section 6 of the act entitled 'An act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-seven, and for other purposes,' approved [June] *July* 12, 1876, as amended (U. S. C., 1934 edition, title 39, sec. 31), is hereby amended to read as follows:

" 'SEC. 6. All vacancies hereafter occurring in the offices of postmasters of the first, second, and third classes shall be filled *as hereinafter provided*, by appointment by the President, by and with the advice and consent of the Senate, and such postmasters so appointed shall hold their offices for four years unless sooner removed or suspended according to [law: *Provided*, That whenever] *law. Whenever* a vacancy occurs in the office of postmaster of the first, second, or third class as the result of (1) death, (2) resignation, (3) removal, (4) retirement, or (5) expiration of term, [the Postmaster General may recommend to] the President [the appointment of] *may reappoint, by and with the advice and consent of the Senate,* the incumbent, [if there be one, or the appointment by promotion of] *or, with the advice and consent of the Senate, he may appoint* a classified civil-service employee [in the Postal Service in the vacancy office, or the] *serving in the post office in which the vacancy occurs, to fill the vacancy or the President, directly or through the* Postmaster General, may request the Civil Service Commission [forthwith] to hold an open competitive examination to test the fitness of applicants to fill such vacancy and the Civil Service Commission shall certify the results thereof to [the Postmaster General, who shall thereupon submit the name of one of the three highest eligibles to] the President [for appointment] *who shall appoint,* by and with the advice and consent of the Senate, *one of the three highest eligibles* to fill the vacancy [unless it is established to the President's satisfaction that the character or residence of such eligible, or other cause, disqualifies him for appointment. Postmasters of the fourth class shall be appointed and may be removed by the Postmaster General, by whom all appointments and removals shall be certified to the General Accounting Office.]'

*"Sec. 2. Postmasters of the fourth class shall be held and considered inferior officers under the Federal Constitution, and shall be appointed by the Postmaster General. Whenever a vacancy occurs in any office of postmaster of the fourth class for which the annual compensation is $500 or more (except offices in Alaska, Canal Zone, Guam, Hawaii, Philippines, Puerto Rico, and Samoa) the Postmaster General shall request the Civil Service Commission to hold an open competitive examination to test the fitness of applicants to fill such vacancy, and the Civil Service Commission shall certify the results thereof to the Postmaster General, who shall appoint one of the three highest eligibles to fill the vacancy. No person appointed to a vacancy in the office of postmaster of the fourth class as the result of an open competitive examination shall be removable except for cause as provided in the civil-service laws. The Postmaster General shall notify the General Accounting Office of all occurrences of vacancies in, and appointments to, all offices of postmasters."*

Your committee further reports:

For a number of years there has been a more or less determined effort made by the Civil Service Commission to obtain control of the appointment of first-, second-, and third-class postmasters in the United States. There has been a great deal of propaganda in behalf of this proposal. In these circumstances it is necessary to give the history of the appointment of postmasters in the United States. Up until the act of July 12, 1876, all postmasters of all classes were appointed by the President by and with the consent of the Senate.

APPOINTMENT OF POSTMASTERS

The statute of 1876 with reference to the appointment of postmasters reads as follows:

"Postmasters of the first, second, and third classes shall be appointed and may be removed by the President by and with the

advice and consent of the Senate, and shall hold their offices for 4 years unless sooner removed or suspended according to law; and postmasters of the fourth class shall be appointed and may be removed by the Postmaster General, by whom all appointments and removals shall be notified to the General Accounting Office (39 U. S. Code 31)."

It will be noted that Presidential postmasters are to be appointed by the President by and with the consent of the Senate and fourth-class postmasters are to be appointed by the Postmaster General. Prior to 1917 the nominations of Presidential postmasters were made by the President without any assistance from the Civil Service Commission. As a matter of fact, when it was decided which of the applicants for any particular office was to be selected, the nominations were sent up to the Senate without reference to or consultation with the Civil Service Commission. In 1917 President Wilson issued an Executive order which provided that when a vacancy occurred in the position of postmaster at any office of the first, second, or third class, as the result of death, resignation, removal, etc., that the Postmaster General should certify the fact to the Civil Service Commission which shall forthwith hold an open competitive examination to test the fitness of the applicants and that when the results of the examination had been certified to the Postmaster General he should submit to the President the name of the highest qualified eligible for appointment to fill the vacancy. This Executive order which was dated March 31, 1917, was amended April 13, 1920, to provide for the selection of a veteran if one had made an eligible rating instead of the highest eligible, this selection to be optional. This order was again amended October 8, 1920, to provide that the vacancy could be filled by the nomination of some person within the classified civil service who had the required qualifications.

Executive orders were issued by Presidents Harding, Coolidge, and Hoover, and in each instance these orders provided for the selection of one of the three highest eligibles. The text of the Executive orders issued by Presidents Roosevelt, Taft, and Wilson are as follows:

"EXECUTIVE ORDER

"Schedule A, subdivision V, paragraph 4, of the Civil Service Rules is hereby amended to read as follows:

"'4. All employees on star routes and in post offices having no city free-delivery service, other than postmasters of the fourth-class, in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Wisconsin, and Michigan.'

"THEODORE ROOSEVELT.

"THE WHITE HOUSE, *November 30, 1908.*"

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EXECUTIVE ORDER

Schedule A, subdivision VII, paragraph 4, of the Civil Service Rules is hereby amended to read as follows:

"4. All employees on star routes and in post offices of the third and fourth classes, other than postmasters of the fourth class except those in Alaska, Guam, Hawaii, Porto Rico, and Samoa."

The regulations governing the appointment of postmasters of the fourth class shall be amended so as to provide that all appointments at offices where the compensation is $500 or more shall be made from a certification of three names instead of one, and where the compensation is less than $500 all appointments shall be made on the recommendation of post-office inspectors after personal investigation in the manner prescribed for making appointments in the States of Massachusetts, New York, Ohio, and Illinois.

WM. H. TAFT.

THE WHITE HOUSE, *October 15, 1912.*

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EXECUTIVE ORDER

The Executive orders of November 30, 1908, and October 15, 1912, bringing the positions of postmasters of the fourth class into the competitive classified service, are hereby amended by adding thereto the following:

"No person occupying the position of postmaster of the fourth class shall be given a competitive classified status under the provisions of said orders unless he has been appointed as a result of open competitive examination, or under the regulations of November 25, 1912, or of January 20, 1909, or until he is so appointed.

"At any post office of the fourth class where the present postmaster was appointed otherwise than as above set forth, appointment shall be made in accordance with the regulations approved November 25, 1912, as amended this date; and for this purpose the Civil Service Commission shall hold an open competitive examination for each such office having an annual compensation of as much as $180, such examinations for all such post offices to be held by States as requested by the Postmaster General; provided that in the event that for any such examination less than three persons apply, the Civil Service Commission may in its discretion authorize selection in accordance with the provisions of the regulations as amended this date governing selections for appointment to offices having annual compensation of less than $180; and in like manner the regulations of November 25, 1912, as amended this date, shall be applied to each office where the annual compensation is less than $180 and where the present incumbent was appointed otherwise than as above set forth."

WOODROW WILSON.

THE WHITE HOUSE, *May 7, 1913.*

Two Executive orders have been issued by President Franklin D. Roosevelt, the first one permitting the selection of any one of the three highest eligibles and the last one, dated July 20, 1936, requiring that the applicant attaining the highest eligible rating be nominated. It reads as follows:

EXECUTIVE ORDER NO. 7421, JULY 11, 1936

"By virtue of and pursuant to the authority vested in me by section 1753 of the Revised Statutes (U. S. C., title 5, sec. 631), by the act of July 12, 1876 (U. S. C., title 39, sec. 31), and as President of the United States, it is hereby ordered that whenever a vacancy occurs in the position of postmaster in any office of the first, second, or third class as the result of (1) death, (2) resignation, (3) removal, or (4) expiration of term, the following procedure shall be observed, in accordance with the provisions of the Civil Service Act of January 16, 1883 (22 Stat. 403), and the rules and regulations made pursuant to the said act insofar as such provisions may be applicable:

"SECTION 1 (a) The Postmaster General may recommend to the President the appointment of the incumbent, or the appointment by promotion of a classified employee in the Postal Service in the vacancy office, provided either such incumbent or such classified employee is found eligible by the Civil Service Commission by noncompetitive examination; or

"(b) Upon request of the Postmaster General, the Civil Service Commission shall forthwith hold an open competitive examination to test the fitness of applicants to fill such vacancy and shall certify the results thereof to the Postmaster General, who shall thereupon submit to the President for appointment to fill the vacancy the name of the highest eligible unless it is established to the satisfaction of the Civil Service Commission that the character or residence of such eligible disqualifies him for appointment. This procedure shall be followed in all examinations announced by the Civil Service Commission subject to the date of this order.

"SEC. 2. No person may be admitted to the examination provided for in section 1 hereof unless he has been a bona fide patron of the office for which a postmaster is to be appointed, for at least 1 year immediately preceding the time fixed for the close of receipt of applications.

"SEC. 3. No person who has passed his sixty-seventh birthday shall be appointed acting postmaster in any office of the first, second, or third class unless he is already in the Postal Service, nor shall any such person, except as provided in section 4 hereof, be admitted to any examination which may be held for any such office under the provisions of section 1.

"SEC. 4. In all examinations held under the provisions of section 1 hereof, the age limit prescribed in section 3 shall be waived as to candidates who are entitled to military preference as a result of service in the World War, the Spanish-American War, or the Philippine Insurrection, and in rating the examination papers of such candidates the Civil Service Commission shall add five points to their earned ratings and make certification to the Postmaster General in accordance with their relative positions thus required. The time such candidates were in the service during such wars may be reckoned by the Commission in making up the required length of business experience.

"SEC. 5. This order supersedes all prior Executive orders affecting or relating to the appointment of postmasters to post offices of the first, second, and third classes. (Promulgated July 20, 1936.)

"6. APPLICATION OF CIVIL SERVICE RETIREMENT ACT

"The provisions of the Civil Service Retirement Act, as amended (secs. 691–a to 708–a of title 5, Executive Departments, Government Officers, and Employees), apply to postmasters of the first, second, and third classes who become 70 years of age before the effective date of said act, as well as to those who became 70 years of age after that date ((1927) Op. Atty. Gen. 309).

"7. POSTMASTER AS OFFICER

"Postmaster is an officer under the United States within a State constitution forbidding such officers to hold State office (*State ex rel. Wimberly* v. *Barham* (1931), 137 So. 862, 173 La. 468)."

The foregoing Executive orders are evidently based on section 631 of the United States Code (Revised Statutes, 1753), reading as follows:

REGULATION OF ADMISSION TO CIVIL SERVICE

"The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties and establish regulations for the conduct of persons who may receive appointments in the civil service."

Now, this act was passed in 1876, before the Civil Service Commission was created in 1883, and evidently had for its purpose to give the President information and aid in determining which person he would select, but has no reference to the Civil Service Commission Act that was passed subsequently. This is further evidenced by the fact that the law of 1876, above cited, specifically directs that postmasters of the first, second, and third classes shall be appointed by the President, by and with the consent of the Senate, and they have been so appointed ever since the Executive order of July 11, 1936.

The present bill has been amended so as to conform to that provision in the Federal Constitution which reads:

"He (the President) shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public

ministers and consuls, judges of the Supreme Court, *and all other officers of the United States*, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of *such inferior officers*, as they think proper, in the President alone, in the courts of law, or in the heads of departments (art. II, sec. 2, par. 2)."

Unless all postmasters are declared to be inferior officers, it is evident that to require the President to appoint the highest eligible certified by the Civil Service Commission will not only deny him his constitutional right of selection but also denies to the Senate its right of confirmation.

The following quotation from an opinion rendered by Attorney General Akerman in 1871 clearly points out a distinction which must ever be kept in mind (13 Op. Atty. Gen. 516):

"If to appoint is merely to do a formal act, that is, merely to authenticate a selection not made by the appointing power, then there is no constitutional objection to the designation of officers by a competitive examination, or any other mode of selection which Congress may prescribe or authorize. But if appointment implies an exercise or judgment and will, the officer must be selected according to the judgment and will of the person or body in whom the appointing power is vested by the Constitution, and a mode of selection which gives no room for the exercise of that judgment and will is inadmissible. If the President in appointing a marshal, if the Senate in appointing its Secretary, if a court or head of department in appointing a clerk must take the individual whom a civil-service board adjudge to have proved himself the fittest by the test of a competitive examination, the will and judgment which determine that appointment are not the will and judgment of the President, of the Senate, of the Court, or of the head of department, but are the will and judgment of the civil-service board, and that board is virtually the appointing power. Viewing the appointing power conferred in the Constitution as a substantial and not merely a nominal function, I cannot but believe that the judgment and will of the constitutional depositary of that power should be exercised in every appointment."

FOURTH-CLASS POSTMASTERS

On November 30, 1908, President Theodore Roosevelt issued an Executive order which had the effect of placing postmasters of the fourth class north of the Ohio River and east of the Mississippi River under civil service. On October 15, 1912, President Taft issued an Executive order, which had the effect of placing all fourth-class postmasters under civil service. On May 7, 1913, President Wilson issued an Executive order, which provided that no person occupying the position of postmaster of the fourth class shall be given a competitive classified status under the previous Executive orders unless such postmaster has been appointed as a result of open competitive examination or under the regulations of November 25, 1912, or of January 20, 1909, or until he is so appointed.

Section 2 of the bill, as amended, provides for the enactment into law of the substance of the existing Executive orders, above referred to, which gave a civil-service status to fourth-class postmasters. The text of section 2 completely conforms to the present practice and makes it impossible for some future President to revoke the Executive orders now in force. In the selection of applicants for the position of fourth-class postmasters, the Postmaster General is permitted to select any one of the three highest eligibles. There is no sound reason why the same practice should not obtain with reference to the selection of Presidential postmasters.

The theory of well-meaning civil-service advocates is that the Civil Service Commission, being a nonpolitical body, will be more likely to secure a person in each community in the United States who will make a more efficient postmaster, and, having once secured such person, retain him in the service until his retirement for age or disability under law.

The objection to such a plan is that the method now in vogue of recommending first-, second-, and third-class postmasters is that a representative of the Civil Service Commission is to be sent from Washington to the post office where the vacancy occurs and by such examination as he may personally choose to make recommend a suitable postmaster. Of course, in making this recommendation, education, general character, experience in management of employees, and fitness are supposed to be taken into consideration.

A more imperfect method of securing an efficient, honest, and desirable postmaster could hardly be imagined. A more direct blow to democratic home rule would be difficult to devise. A more effective building of centralized bureaucracy here in Washington could scarcely be conceived. The civil-service employee from Washington sent to make the examination would virtually have the power to appoint anyone whom he pleased as postmaster at the particular post office examined. He might or might not see the man appointed. He might take the advice and opinion of men entirely favorable to him and who, for this reason or that, good or bad, might want him appointed.

Of course, the civil-service representative would make a report, but such reports are secret and confidential, except to the Commission, which acts upon the report. In nine hundred and ninety-nine cases out of a thousand the Commission would appoint the person favorably recommended. The examining employee from Washington would be responsible to no one, except the Commission, and the Commission itself would be responsible to no one.

It is inconceivable that anyone could believe that the power of appointing all first-, second-, and third-class postmasters in the country should be centered in a bureau here in Washington or that a postmaster acceptable to the patrons of the local post office could be obtained, except by accident, by such a method of appointment.

On the other hand, under a system which has grown up during all the years of our Government, a postmaster, unless it be at the home of a Senator, is recommended by the Congressman to the Postmaster General or to the President, and the President sends his name to the Senate. If the man recommended is, in the opinion of the Senate, a proper man, he is confirmed. Later on in our history, the President sought the Civil Service Commission's assistance by having that Commission certify a list of the three highest eligibles, from which the Post Office Department makes a recommendation to the President and one of the three highest eligibles is then nominated. The Senate then confirms or rejects the nomination. This procedure has worked remarkably well.

In the first place, if a proper man is not recommended by the Representative in Congress the people have a right to hold him responsible by their votes. If the Congressman makes a mistake, the Postmaster General or the President may interfere and recommend or appoint a proper man. Not only that, but if the Congressman, the Postmaster General, and the President all make a mistake and it is brought to the attention of the Senate, the Senate need not confirm such postmaster but may, and sometimes does, reject him. To my mind, this method of appointing postmasters is ideal, and it is one that has been tried out through all the years. It follows our constitutional system of checks and balances. It is the rarest thing that a postmaster goes wrong. Postmasters are responsible to the Congressman, or to the Senators where the office is in the Senator's home town, and, as a rule, they are a competent and efficient body of men.

Moreover, postmasters, thus appointed, have built up the Post Office Department into one of the finest governmental mechanisms that have been established in our country. Its efficiency and success are the pride of our Republic. There is no other post-office system in the world that is half so effective or so prompt. The loss of a letter is almost unheard of. The Postal System taken as a whole is virtually self-supporting.

Why undertake to tear down so splendid a system and substitute in its place a system of centralized bureaucracy? Why substitute inefficiency for efficiency? Why substitute an untried system for a tried system that has worked well? Why not let the localities have something to do with the selection of their own postmasters? Why repudiate entirely the doctrine of local self-government? Why is a Congressman, familiar with practically every person in his district, not better able to secure a good and efficient postmaster for a town where he is well known than is a civil-service clerk in Washington? The Civil Service Commission claims not to be a political body, yet it has been lobbying for this additional power for years.

Your committee is of the opinion that the system of selecting postmasters, in vogue before July 11, 1936, is the best practicable system that could be devised for getting the best, most efficient, most honest, and most satisfactory postmasters. It should be retained. Therefore, your committee recommends that Senate bill No. 3022, as amended, be enacted into law.

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MINORITY VIEWS OF MESSRS. O'MAHONEY, LOGAN, AND LA FOLLETTE

The bill reported by the majority and the alternatives offered by the minority represent a clear-cut issue between the patronage system on the one hand and the merit system on the other in the selection of postmasters of the first, second, and third classes. The bills also present a clear-cut issue between the repudiation of party promises represented in the majority bill and the redemption of those promises represented in the substitute urged by the minority.

Beginning with Cleveland, every President has declared his support of the merit system and, in almost every campaign in recent years, both major political parties have likewise declared for the extension of civil service. In the campaign of 1936, both Presidential candidates and both parties declared in favor of the extension of the civil-service law to the selection of postmasters.

There is no mistaking the meaning of this pledge from the Democratic platform of 1936:

"For the protection of government itself and promotion of its efficiency we pledge the immediate extension of the merit system through the classified civil service—which was first established and fostered under Democratic auspices—to all non-policy-making positions in the Federal service.

"We shall subject to the civil-service law all continuing positions which, because of the emergency, have been exempt from its operation."

In this declaration the Democratic National Convention formally and solemnly boasted that the civil-service system "was first established and fostered under Democratic auspices." It is unthinkable that a Congress so completely dominated by the Democratic Party and a Senate in which that party holds the overwhelming majority it now has should deliberately discard that promise.

President Roosevelt has given emphatic proof of the sincerity of his intentions, first, by directing the Postmaster General in July 1933 to prepare legislation placing all postmasterships upon a statutory civil-service basis, and, second, by issuing an Executive order in July 1936 extending the merit system to the appointment of postmasters of the first, second, and third classes after Congress had failed to pass civil-service bills, which had been previously introduced with the approval of the administration.

On January 28, 1937, the House of Representatives passed a bill (H. R. 1531), commonly called the Ramspeck bill, which extended

the civil-service law to the appointment of all postmasters of the first, second, and third classes. This measure provides that such postmasters shall be appointed without term by the Postmaster General, in accordance with the civil-service law and without confirmation by the United States Senate. It authorizes the reappointment of incumbents at the expiration of their current terms or the promotion of postal employees.

Post offices of the fourth class, namely, those in which the compensation is less than $1,100 per year, are not mentioned in the Ramspeck bill. These appointments under existing law are made by the Postmaster General, but, under an Executive order of President Wilson, in accordance with civil-service rules. By passing this bill the House of Representatives carried out the pledge made by both parties to the people in the previous campaign. The bill reported by the majority repudiates this pledge, for if enacted it would restore the patronage system and, if carried out by the President, would destroy the whole effect of the existing Executive order.

This measure continues the system of Presidential appointment of postmasters of the first, second, and third classes for terms of 4 years, by and with the advice and consent of the Senate, authorizes the appointment of incumbents or the promotion of civil-service employees, and provides that the President "may request" the Civil Service Commission to hold an open competitive examination for the certification of three eligibles for appointment. There is no obligation upon the President under the terms of this measure to call at any time for a civil-service examination.

The only apparent concession to the merit system in the majority bill is the fact that section 2 extends to fourth-class offices by statute the civil-service protection now granted by Executive order. This, however, is not a concession at all, because fourth-class postmasters have been appointed under the civil-service rules and regulations without interruption since the Executive order of President Woodrow Wilson on May 7, 1913, and there is little possibility that any President would, by Executive order, undo the great benefits which have been derived from the establishment of the merit system in the selection of postmasters of this class.

The majority bill is frankly based upon the theory that all postmasters drawing salaries of $1,100 or more should be selected by Members of the House of Representatives, except that Members of the Senate should have the right to name the postmasters in their home cities. This principle, of course, is qualified by the practical consideration that a Member of the House or a Member of the Senate who is not affiliated with the party in executive control of the Government is not permitted to make a recommendation. In such instances the recommendation is made by some proper member of the political hierachy affiliated with the party in power.

The theory that Members of Congress should be permitted to appoint postmasters is in violation of our constitutional system, which prescribes that officers of the United States shall be appointed by the President with the advice and consent of the Senate, except that "the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments" (art. II, sec. 2, clause 2).

The appointment of executive officers is an executive function and, when exercised by Members of Congress, through the acquiescence of the Executive, tends to deprive the legislative branch of the legislative freedom it ought to enjoy and preserve.

The fact that the majority bill proposes to extend by statute the benefits of the civil-service law to post offices of the fourth class is in fact a confession that the merit system should be extended to all postmasterships. No effort is made to supersede the Executive order by which some 32,000 fourth-class postmasters are given the protection of the civil service, because, in the first place, salaries of $1,100 or less are not considered worthy of the effort of the mere job hunter; and, in the second place, because fourth-class postmasters have no assistants and must do the work themselves. Therefore, no one aspires to such appointments save those who can perform the task efficiently and to the satisfaction of the public.

In the cases of third-class postmasters, where assistants are needed, a financial allowance is made by the Department so that the prize to be dispensed in such cases is the salary, ranging from $1,100 to $2,400, plus an allowance for clerical assistance which is expended at the will of the postmaster.

Postal employees under the postmaster in all first- and second-class offices are appointed only under the civil-service law, but in all save about 2,000 of the first- and second-class offices, there are assistant postmasters, civil-service employees, in addition to the postmasters. These assistants are the postal experts who, in fact, in almost all cases actually have charge of the offices and do the postal work. It is highly significant that the salaries of assistant postmasters average approximately 40 percent less than the salaries of the postmasters under whom they serve. They hold on through one administration after another, while their immediate superiors change with every change of administration.

It is the belief of the minority that the salaries should go to the persons who actually do the work; that every postal employee, when he enters the Postal Service, should feel that by diligence and ability he could attain postmastership, and that, even when an administration changes, no political employee could come into the post office in which he works and begin immediately to receive a salary 40 percent in excess of that which he receives. The extension of the merit system to the appointment of all postmasters could only have the effect of immediately improving the Postal Service. It would be an inspiration to every postal employee and, in the opinion of the minority, would be reflected at once in an increase of the efficiency and economy with which the mails are handled. From a purely parliamentary point of view the passage of the majority bill would be an effective impediment to any action at all, for the Senate measure, if sent to the House, would have to go through the whole legislative procedure from the beginning. If there is to be a postmasters' bill it should, therefore, be based upon the measure already passed by the House.

In the committee this minority offered an amendment of Senator McKellar's bill which, though extending the civil-service law to the appointment of all postmasters, provided for confirmation by the Senate in the cases of postmasters of the first, second, and third classes. Since this substitute (which is attached to this report and marked "Exhibit A") was rejected, the minority feels that the Ramspeck bill, amended to meet the suggestions contained in the letter of the Postmaster General to the chairman of the Committee on Civil Service, should be substituted for S. 3022. It is, therefore, recommended that H. R. 1531, amended as follows, be substituted for the bill reported by the majority:

[H. R. 1531, 75th Cong., 1st sess.]

[Omit the part in black brackets and insert the part printed in italic]

An act extending the classified civil service to include postmasters of the first, second, and third classes, and for other purposes

*Be it enacted, etc.*, That postmasters of the first, second, and third classes shall hereafter be appointed without term, by the Postmaster General, in accordance with the provisions of the act entitled "An act to regulate and improve the civil service of the United States," approved January 16, 1883: *Provided*, That postmasters now serving who have satisfactory records shall continue to serve until their 4-year terms of office expire, after which they may be reappointed without term in accordance with the provisions of section 2 of this act.

SEC. 2. Appointments to positions of postmaster at first-, second-, and third-class post offices shall be made by the reappointment and classification, noncompetitively, of the incumbent postmaster, or by promotion from within the Postal Service in accordance with the provisions of the Civil Service Act and Rules, [unless the Postmaster General certifies to the United States Civil Service Commission that there is no qualified person serving in the vacancy office available for such promotion] *or by competitive examination in accordance with the provisions of the Civil Service Act and rules.* No person shall be eligible for appointment under this section unless such person has actually resided within the delivery of the office to which he is appointed, or within the city or town where the same is situated for 1 year next preceding the date of such appointment, if the appointment is made without competitive examination; or for 1 year preceding the date fixed for the close of receipt of applications for examination, if the appointment is made after competitive examination.

SEC. 3. Appointments of acting postmasters in all classes of post offices shall be made [in accordance with the provisions of the civil-service rules governing temporary appointments] *by the Postmaster General.*

SEC. 4. All acts or parts of acts inconsistent herewith are hereby repealed.

Passed the House of Representatives January 28, 1937.

Attest:

SOUTH TRIMBLE, *Clerk.*

The report of the Postmaster General on H. R. 1531 is as follows:

APRIL 15, 1937.

Hon. W. J. BULOW,

*Chairman, Committee on Civil Service, United States Senate.*

MY DEAR SENATOR BULOW: In accordance with your request, the Department has carefully reviewed H. R. 1531 and S. 49, bills proposing to extend classified civil service to postmasters of the first, second, and third classes.

H. R. 1531 passed the House of Representatives on January 28, 1937. It proposes to extend the classified civil service to include postmasters of the Presidential offices and section 1 changes the method in appointing postmasters. The Department raises no objection to section 1 of the bill.

Section 2 of the bill specifies the manner in which appointments are to be made when vacancies occur through death, resignation, retirement, removal for cause, or expiration of term. Under the provisions of this section, the Postmaster General may reappoint the incumbent, if there be one, provided he qualifies through noncompetitive examination, or promote from within the Postal Service in accordance with the provisions of the Civil Service Act and Rules. It would be incumbent upon the Department to make the appointment through one of these two ways or the Postmaster General could certify to the Civil Service Commission that there is no qualified person serving in the vacancy office available for such promotion and request the Civil Service Commission to conduct a competitive examination for the purpose of establishing an eligible register from which the appointment would be made in accordance with the Civil Service Act and Rules. It would not be practicable or in the interest of the service to require the Postmaster General to make any such certification before an open competitive examination could be requested.

Section 3 of the bill provides that appointments of acting postmasters in all classes of post offices shall be made in accordance with the provisions of the Civil Service Rules governing temporary appointments. This would not work to good advantage in Presidential offices, and it is believed that the appointment of acting

postmasters who serve until the regular appointment is made should be left to the best judgment of the Department. There would be no objections to providing that acting postmasters should serve not to exceed 6 months from the date of such designation so as to insure that the regular appointment would be made without unnecessary delay. Provision should be made that the time could be extended beyond 6 months with the permission of the Civil Service Commission, in order that there may be time to work out difficult cases and establish eligible registers, if necessary.

S. 49 is similar to H. R. 1531 in that it provides for the extension of the classified civil service to Presidential postmasters.

Section 2 provides that appointments at offices of the first and second class shall be made by the promotion of an employee in the vacancy office or the reappointment of the incumbent postmaster, if there be one, provided such employee or the incumbent postmaster is found to be qualified through noncompetitive examination. This section also provides (lines 6 to 12, p. 2) that the Postmaster General must certify to the Civil Service Commission that no employee in the vacancy office is qualified and that the incumbent postmaster is not qualified before an open competitive examination can be requested. The Department could not approve of this provision for the reason that it would not be practicable or in the interest of the service to require that the Postmaster General make such certification.

Section 2 (b) relates to the appointment of postmasters at third-class offices and provides for the reappointment of the incumbent postmaster, if there be one, through noncompetitive examination or the selection from an eligible register established by the Civil Service Commission through open competitive examination. No provision is made for consideration of a classified employee. The clerks in third-class post offices have no civil-service status; however, a number of rural routes are attached to third-class offices, and there would be no good reason for failure to recognize and consider rural carriers. There is no valid reason for making any different provisions at third-class offices than are made for first-class.

Any legislation extending the classified civil service to Presidential postmasters should provide, in connection with appointments due to vacancies through death, resignation, retirement, removal for cause, or expiration of term, for the filling of the vacancy by the Postmaster General by either of the following methods:

1. By the reappointment of the incumbent, if there be one, through noncompetitive examination.

2. By the promotion of a classified employee in the vacancy office through noncompetitive examination.

3. By the selection from an eligible register established by the Civil Service Commission in accordance with the Civil Service Act and rules. The selection from an eligible register in accordance with the Civil Service Act and rules should be made in the same manner as governs selections from eligible registers in filling all other civil-service positions.

Sincerely yours,

(Signed) JAMES A. FARLEY,
*Postmaster General.*

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EXHIBIT A

[S. 3022, 75th Cong., 2d Sess.]

A bill to amend the law relating to appointment of postmasters

*Be it enacted, etc.*, That section 6 of the act entitled "An act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1877, and for other purposes," approved July 12, 1876, as amended (U. S. C., 1934 ed., title 39, sec. 31), is hereby amended to read as follows:

SEC. 6. Postmasters of first, second, third, and fourth classes shall hereafter be appointed without term in accordance with the provisions of the act entitled "An act to regulate and improve the civil service of the United States," approved January 16, 1883; *Provided*, That in the cases of postmasters of the first, second, and third classes, the appointment shall be made by the President, by and with the advice and consent of the Senate: *Provided further*, That in the case of postoffices of the fourth class, postmasters shall be appointed and may be removed by the Postmaster General, by whom all appointments and removals shall be notified to the General Accounting Office: *Provided further*, That whenever a vacancy occurs in the office of postmaster of the first, second, or third class as the result of (1) death, (2) resignation, (3) removal, (4) retirement, or (5) expiration of term of the present incumbent, the Postmaster General may recommend to the President the appointment of the incumbent, if there be one, or the appointment by promotion of a classified-civil-service employee in the Postal Service in the vacancy office, and the President may appoint the person so recommended.

JOSEPH C. O'MAHONEY,
M. M. LOGAN,
ROBERT M. LA FOLLETTE, Jr.

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VIEWS OF MR. BRIDGES

[To accompany S. 3022]

The Senate Committee on Post Offices and Post Roads has for the past 2 weeks been considering a bill to amend an act of Congress which was approved June 12, 1876, as amended (U. S. C., 1934 ed., title 39, sec. 31), having to do with the methods of appointment of postmasters of the first, second, and third classes. This amending bill introduced by Senator MCKELLAR will again saddle the Post Office Department with the spoils system. It is merely a perpetuation of the patronage method and the spoils system at its worst. Its purpose is to cover all the present incumbent postmasters of the first, second, and third classes and give full opportunity for their reappointment regardless of merit.

The passage of this bill will put a premium on politics to the detriment of the Postal Service. It will mean the change of postmasters with every change of administration, with a great confusion and a great expense to the Post Office Department and to the taxpayer. It may impair the service in each community and the Postal Service as a whole.

Its enactment would be a direct repudiation of the platforms of both major political parties and in bold defiance of public opinion. Its enactment would be a direct contradiction to the desires of President Roosevelt as expressed by his statements concerning the merit system, to wit:

"1. The merit system in civil service is in no danger at my hands; but on the contrary I hope it will be extended and improved during my term as President.

"2. It matters not what political party is in power by the elective will of the people, Government functions for all, and there can be no question of greater moment or broader effect than the maintenance, strengthening, and extension of the merit system established in the competitive principles of the Civil Service Act * * *."

Its enactment would completely nullify the Executive order of July 20, 1936 (No. 7421), relating to the appointment of postmasters to post offices of the first, second, and third classes.

Although it is believed that the present system of selection of postmasters is inadequate as a permanent measure, this system is better than that which would result from foisting on the public more spoils system, which passage of the McKellar bill would insure.

This minority believes a measure should be enacted to provide for the appointment or promotion of classified civil-service employees in the Postal Service to the office of postmaster; or that such office shall be filled as the result of an open competitive civil-service examination in which the person receiving the highest mark shall be appointed unless the President or Postmaster General shall certify to Congress some reason for the failure of said appointment. In this way this minority of your committee believes the reforms sought may be attained.

Let us defend the civil service and the merit system from further encroachment by political spoilsmen.

H. STYLES BRIDGES.

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RECESS

Mr. BARKLEY. I move that the Senate take a recess until 12 o'clock noon on Monday next.

The motion was agreed to; and (at 2 o'clock and 21 minutes p. m.) the Senate took a recess until Monday, December 6, 1937, at 12 o'clock meridian.

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## CONFIRMATIONS

*Executive nominations confirmed by the Senate December 4 (legislative day of November 16), 1937*

POSTMASTERS

KANSAS

Dorothy H. Claassen, Bethel College.

MINNESOTA

Cora E. Cook, Chandler.
Nettie A. Terrell, Elysian.
Anna E. Smith, Foreston.
George E. Roche, Garfield.
Robert R. Green, Medford.
Claire M. Peterson, Stanchfield.
Lura V. Frahm, Triumph.

TENNESSEE

Charles L. Wells, Byrdstown.
William H. Fox, Graysville.
Roy B. King, Madison College.
Leonard F. Robinette, Mosheim.
John Crittenden Pope, Springfield.
James K. St. Clair, White Bluff.

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# SENATE

## MONDAY, DECEMBER 6, 1937

*(Legislative day of Tuesday, November 16, 1937)*

The Senate met at 12 o'clock meridian, on the expiration of the recess.

THE JOURNAL

On request of Mr. BARKLEY, and by unanimous consent, the reading of the Journal of the proceedings of the calen-